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VOLUME 4
Part 1
1967 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 4 (PART 1) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 4 (PART 1) THROUGH VOLUME 420, PACIFIC REPORTER (2ND SERIES)

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NEW LAWS IN VOLUME 4 (Part 1)

For index see pocket supplement to Replacement Volume 9

ENACTED IN 1963

Corner recordation act, 67-2001 to 67-2010.
Game wardens' retirement system, 68-1401 to 68-1429.
Joint tenancy created by direct conveyance, 67-1602.1.
Minors' capacity to borrow money for education, 64-106.1.
Morticians and funeral directors, 66-2701 to 66-2717.
Real Estate License Act, 66-1924 to 66-1946.
Security agreements, retention in files by public officer, 59-516.1.
Subdivided lands, regulation of sale and lease, 67-2101 to 67-2116.
Unclaimed property, disposition, 67-2201 to 67-2230.

ENACTED IN 1965

Acquisition of specific tract for state park, 62-304 note.
Civil right to freedom from discrimination, 64-301 to 64-303.
Co-ordinate system for land descriptions, 67-2011 to 67-2019.
Electrical safety law, 66-2801 to 66-2820.
Horse racing, 62-501 to 62-514.
Landowner's restricted liability for injuries to gratuitous licensees for recreation, 67-808, 67-809.
Outdoor recreational resources development, 62-401 to 62-404.
Petroleum products dealers, 60-223 to 60-233.
Public building construction for accommodation of handicapped persons, 69-3701 to 69-3719.
Refuse disposal areas, 69-4001 to 69-4010.
Unit Ownership Act, 67-2301 to 67-2342.

ENACTED IN 1967

Air pollution, 69-3904 to 69-3923.
Cadavers, 69-5101 to 69-5106.
Cesspools, septic tanks and privies, 69-5401 to 69-5408.
Dead bodies, disposition, 69-2311 to 69-2314.
Hospitals,
    Medical and related facility survey and construction, 69-5301 to 69-5313.
    Related and long-term care facilities, 69-5201 to 69-5221.
Industrial hygiene, 69-4201 to 69-4205.
Local boards of health, 69-4501 to 69-4519.
Masseurs, regulation, 66-2901 to 66-2914.
Plumbers, fixture fee, 66-2427.
Radiation control, 69-5801 to 69-5816.
Shoddy control, 69-4701 to 69-4707.
State board of health, 69-4101 to 69-4118.
Subdivisions, 69-5001 to 69-5005.
Swimming pools and bathing places, 69-5501 to 69-5511.
Tourist camp grounds, 69-5601 to 69-5607.
Tuberculosis control, 69-4301 to 69-4317.
Unsolicited goods, 67-1706.1.
Venereal disease, 69-4601 to 69-4617.
Violation of health laws, 69-5701.
Vital statistics, 69-4401 to 69-4437.
Water pollution, 69-4801 to 69-4819.
Water supply, public, 69-4901 to 69-4908.
Water treatment facilities, 69-5901 to 69-5912.

39 252MT XL 29.50
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AMENDMENTS IN VOLUME 4 (Part 1)

Abstracters of title, regulation, 66-2104, 66-2106.
Adoption of children, 61-211, 61-212.
Ambulance service, 69-3601.
Architects, regulation, 66-108 to 66-110, 66-112, 66-114, 66-115.
Auctioneers and auction sales, 66-202, 66-203.1, 66-204.
Barbers and barber shops, 66-407, 66-408.
Boiler engineers, 69-1501, 69-1503, 69-1512, 69-1515, 69-1516.
Chiropody regulation, 66-603, 66-607, 66-608.
Chiropractic regulation, 66-506, 66-512 to 66-514.
Cosmetology regulation, 66-809, 66-815, 66-816.
Dental practice, 66-904, 66-906, 66-909, 66-919, 66-925.
Doors on public buildings, 69-2101, 69-2103.
Electrical safety law, 66-2816.
Engineers and land surveyors, 66-2333.
Explosives regulation, 69-1910.
Fire safety in public buildings, 69-1801, 69-1802, 69-1808.
Horse racing, 62-505, 62-507, 62-510, 62-511, 62-514.
Medical practice, 66-1008, 66-1009.
Motorboat and vessel regulation, 69-3502, 69-3505, 69-3508.1, 69-3508.2.
Nursing practice, 66-1221, 66-1222, 66-1228, 66-1231 to 66-1234, 66-1236, 66-1237, 66-1242, 66-1243.
Oil and gas conservation commission, 60-145, 60-147.
Optometry regulation, 66-1302, 66-1307, 66-1311, 66-1314, 66-1315.
Osteopathic practice, 66-1403, 66-1405, 66-1410.
Pharmacy regulation, 66-1505, 66-1508, 66-1527.
Physical therapy practice, 66-2503.
Plumbers, regulation, 66-2402, 66-2403, 66-2405, 66-2407.
Principal and Income Act, 67-1912.
Property, acquisition, 67-1301, 67-1410.
Public accountants, regulation, 66-1812.
Public officers and employees,
    Retirement system, 68-203, 68-301, 68-405, 68-501, 68-701, 68-702, 68-704, 68-705 to 68-710, 68-801, 68-901, 68-1001, 68-1004, 68-1101, 68-1307, 68-1413.
    Social security coverage, 59-1103.1, 59-1104 to 59-1106, 59-1110.
Public records, 59-514, 59-516.
Sanitarian registration, 69-3404.
State officers and employees,
    Mileage allowances, 59-801, 59-802.
    Per diem allowances, 59-538.
    Social security coverage, 59-1103.1, 59-1104 to 59-1106.
State parks, 62-301, 62-304, 62-305, 62-307, 62-310, 62-311, 62-314.
Unclaimed property, disposition, 67-2202, 67-2211 to 67-2213.
Uniform Gifts to Minors Act, 67-1801 to 67-1804, 67-1806, 67-1807, 67-1810, 67-1811.
Veterinary practice, 66-2203, 66-2204, 66-2209 to 66-2209.2.
Water well contractors, 66-2602, 66-2604 to 66-2606, 66-2615.

MONTANA REVISED CODES

TITLE 56—NOTARIES AND COMMISSIONERS OF DEEDS

CHAPTER 1—NOTARIES PUBLIC

56-107. (391) **Repealed.**

Repeal

This section (Sec. 914, Pol. C. 1895), relating to protests of bills or notes, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

TITLE 57—NUISANCES

CHAPTER 1—NUISANCES PUBLIC AND PRIVATE—REMEDIES

57-101. (8642) Nuisance defined.

Sale of Milk at Less than Minimum Price

A sale of milk at a price less than the minimum prescribed by the Montana milk control board under section 27-407, was a nuisance, being an activity which was injurious to health. Montana Milk Control Board v. Rehberg, 141 M 149, 376 P 2d 508, 517.

57-102. (8643) Public nuisance.

References

Cited in Montana Milk Control Board v. Rehberg, 141 M 149, 376 P 2d 508, 517.

TITLE 58—OBLIGATIONS

CHAPTER 2—JOINT AND SEVERAL, CONDITIONAL AND ALTERNATE OBLIGATIONS

58-210. (7406) **When performance, etc., excused.**

References

Laughnan v. Sorenson, 139 M 531, 366 P 2d 433, 435.

CHAPTER 3—TRANSFER OF OBLIGATIONS

58-301. (7413) **Burden of obligation not transferable.**

References

Kintner v. Harr, 146 M 461, 408 P 2d 487.

58-303. (7415) **Nonnegotiable instrument may be transferred.**

Chattel Mortgage

The assignee of a chattel mortgage given by the buyer of an automobile took the mortgage subject to the buyer's defenses and equities which existed at the time of the assignment of the instrument. Sonnek v. Universal C. I. T. Credit Corp., 140 M 503, 374 P 2d 105, 108.

58-304. (7416) **Covenants running with land, nature and effect of.**

References

Kosel v. Stone, 146 M 218, 404 P 2d 894.

58-305. (7417) **What covenants run with land.**

References

Kosel v. Stone, 146 M 218, 404 P 2d 894.

58-306. (7418) **Same—covenant for benefit of property.**

References

Kosel v. Stone, 146 M 218, 404 P 2d 894.

58-307. (7419) **Same—covenants to pay rent, etc.**

References

Kosel v. Stone, 146 M 218, 404 P 2d 894.

58-308. (7420) **What covenants run with land when assigns, etc.**

References

Kosel v. Stone, 146 M 218, 404 P 2d 894.

58-309. (7421) **Who are bound by covenants.**

References

Kosel v. Stone, 146 M 218, 404 P 2d 894.

CHAPTER 4—EXTINCTION OF OBLIGATIONS BY PERFORMANCE, OFFER OF PERFORMANCE AND PREVENTION OF PERFORMANCE

58-410. (7433) By whom to be made.

References

Schultz v. Campbell, — M —, 413 P 2d 879.

58-423. (7446) Extinction of pecuniary obligation.

References

United States v. George A. Fuller Co., 250 F Supp 649.

58-427. (7450) Effect of offer on interest and accessories of obligation.

References

Schultz v. Campbell, — M —, 413 P 2d 879; United States v. George A. Fuller Co., 250 F Supp 649.

58-429. (7452) What excuses performance, etc.

References

Schultz v. Campbell, — M —, 413 P 2d 879.

58-430. (7453) Effect of prevention of performance.

References

Schultz v. Campbell, — M —, 413 P 2d 879.

CHAPTER 5—EXTINCTION OF OBLIGATIONS BY ACCORD AND SATISFACTION, NOVATION AND RELEASE

58-502. (7457) Effect of accord.

Unsatisfied Accord

Where buyer of ranch agreed to take over the debt of the seller on mortgaged sheep on the property, but the agreement and promise of settlement of the debt were never completed, there was no satisfaction and seller was still liable for the debt. Goggins v. Bookout, 141 M 449, 378 P 2d 212.

58-503. (7458) Satisfaction, what constitutes.

References

Goggins v. Bookout, 141 M 449, 378 P 2d 212.

58-509. (7464) Obligation extinguished by release.

Avoidance

Where plaintiff, in his reply, alleged that the release pleaded by defendant's answer was procured through fraud, raising an issue of fact concerning a voidable release, whether or not there was sufficient fraud to avoid the release was a question for the jury to determine under proper instruction. Westfall v. Motors Ins. Corp., 140 M 564, 374 P 2d 96, 99.

Rescission

A release, being a contract, is subject to rescission for the same reasons as other contracts, including fraud or mistake of fact. Westfall v. Motors Ins. Corp., 140 M 564, 374 P 2d 96, 98, 99.

CHAPTER 6—OBLIGATIONS IMPOSED BY LAW

58-607. (7579) Responsibility for willful acts, negligence, etc.

Breach of Duty to Warn

Corporation was liable for death of plaintiff's dairy cows pastured on a strip of land adjoining electric substation of corporation and for losses occasioned by poisoning resulting from its use of chemical sprayed upon grass and weeds, which it knew was dangerous to animals, where it failed to warn plaintiff of the danger. Hopkins v. Ravalli County Electric Cooperative, Inc., 144 M 161, 395 P 2d 106. 109.

TITLE 59—OFFICES AND OFFICERS

Chapter 5. Prohibitions and general provisions applicable to public officers, 59-514, 59-516, 59-516.1, 59-538.
8. Mileage of public officers, 59-801, 59-802.
11. Federal Social Security Act—coverage of certain officers and employees, 59-1103.1, 59-1104, 59-1105, 59-1106, 59-1110.
12. Personnel administration law, Repealed—Section 9, Chapter 3, Ex. Laws of 1967.

CHAPTER 4—APPOINTMENTS, NOMINATION AND OATH OF OFFICE

59-405. (422) **Term of office, when not prescribed.**

Constitutionality

This section is not violative of section 18, article V of the constitution. State ex rel. MacGilvra v. District Court of the First Judicial District, — M —, 418 P 2d 874, 876.

Removal of Director of State Historical Society

Under this section and sections 44-519 and 44-523 the power to remove the director of the state historical society lies in the board of trustees of the state historical society and it may do so without notice or opportunity to be heard. State ex rel. MacGilvra v. District Court of the First Judicial District, — M —, 418 P 2d 874, 876.

CHAPTER 5—PROHIBITIONS AND GENERAL PROVISIONS APPLICABLE TO PUBLIC OFFICERS

Section 59-514. Destruction of old county records may be ordered by commissioners with examiner's approval—destruction of old school district records may be ordered by trustees with examiner's approval.
59-516. Certain records to be destroyed after twenty-five (25) years.
59-516.1. Security agreements.
59-538. Expenses of persons in state service—per diem allowance.

59-514. (455.2) **Destruction of old county records may be ordered by commissioners with examiner's approval—destruction of old school district records may be ordered by trustees with examiner's approval.** (1) Any county officer may destroy old worthless reports, papers or records in his office that have served their purpose and that are substantiated by permanent records, upon the order of the board of county commissioners and with the approval of the state examiner.

(2) A school officer may destroy old worthless reports, papers or records in his office that have served their purpose and that are substantiated by permanent records, upon the order of the board of trustees and with the approval of the state examiner.

History: En. Sec. 2, Ch. 92, L. 1935; amd. Sec. 1, Ch. 166, L. 1967.

Amendments

The 1967 amendment numbered the first paragraph subsection (1), and added subsection (2).

59-516. (455.4) **Certain records to be destroyed after twenty-five (25) years.** Any claim, warrant, voucher, bond or treasurer's general

receipt may be destroyed by any county, city or town or school district officer after a period of twenty-five (25) years.

History: En. Sec. 4, Ch. 92, L. 1935; amd. Sec. 12, Ch. 189, L. 1953; amd. Sec. 1, Ch. 90, L. 1963; amd. Sec. 1, Ch. 95, L. 1967.

Amendments

The 1963 amendment completely rewrote this section, which formerly read: "Under no circumstances shall any claim, warrant, voucher, bond or treasurer's general receipt be destroyed by any county, city or town officer."

The 1967 amendment inserted "or school district" after "town," and made a minor style change.

59-516.1. Security agreements. Termination statements filed under the Uniform Commercial Code—Secured Transactions shall be retained by the filing officer for a period of eight (8) years after receipt, after which they may be destroyed. Financing statements, continuation statements, statements of assignment, and statements of release, the filing of which is authorized by the Uniform Commercial Code—Secured Transactions and as to which no termination statement has been filed, shall be retained by the filing officer for a period of eight (8) years after lapse of the original financing statement or of the latest continuation statement, whichever is later. At the expiration of such period all such statements may be destroyed. [Effective January 1, 1965.]

History: En. 59-516.1 by Sec. 11-144, Ch. 264, L. 1963.

59-538. Expenses of persons in state service—per diem allowance. Every person engaged in any service in every department of state, inclusive of persons in appointive positions, or positions created by law, whose duties consist of full or partial time in traveling to perform any service for the state under monthly or yearly salary, or who may be sent by any authorized executive of any department of the state upon a mission in performance of any clerical work, supervisory or extension work or otherwise, of every kind and character, shall be allowed, for the time engaged in such travel, twelve dollars ($12) per day for such travel within the state of Montana, and for travel outside the state of Montana the sum of twenty dollars ($20) per day for meals and other necessary expenses; provided, that the provisions of this act shall not apply to persons holding offices specifically provided for in section 93-305, or section 93-313; provided that nothing herein contained shall be construed as affecting the validity of section 43-310; and provided further that the provisions of this act shall not apply to the elective state public officers of the state of Montana who shall in lieu thereof be authorized actual and necessary expenses while engaged in state service away from Helena, not to exceed twenty dollars ($20) per day.

History: En. Sec. 2, Ch. 66, L. 1955; amd. Sec. 1, Ch. 207, L. 1957; amd. Sec. 1, Ch. 108, L. 1961; amd. Sec. 1, Ch. 116, L. 1963; amd. Sec. 1, Ch. 48, L. 1967.

Amendments

The 1963 amendment increased per diem allowance within the state from $8 to $10 and per diem allowance without the state from $11 to $16.

The 1967 amendment increased per diem allowances within the state from $10 to $12 per day; substituted "and for travel * * * and other necessary expenses" for

"and sixteen dollars ($16) per day for such travel outside the state of Montana" after "Montana"; and increased the actual expense limit for elected officers from $15 to $20 per day.

CHAPTER 8—MILEAGE OF PUBLIC OFFICERS

Section 59-801. Mileage of all officers.
59-802. Same—liability of approving board for exceeding authorized amount.

59-801. (4884) **Mileage of all officers.** Members of the legislative assembly, state officers, township officers, jurors, witnesses, county agents, and all other persons, except sheriffs, who may be entitled to mileage, when using their own automobiles or airplanes in the performance of official duties, shall be entitled to collect mileage at a rate of nine cents (9¢) per mile for the distance actually traveled by automobile, and at the rate of twelve cents (12¢) per air mile for the distance actually traveled by airplane, and no more unless otherwise specifically provided by law; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310.

History: En. Sec. 4590, Pol. C. 1895; re-en. Sec. 3111, Rev. C. 1907; re-en. Sec. 4884, R. C. M. 1921; amd. Sec. 1, Ch. 16, L. 1933; amd. Sec. 1, Ch. 121, L. 1941; amd. Sec. 1, Ch. 201, L. 1947; amd. Sec. 1, Ch. 93, L. 1949; amd. Sec. 1, Ch. 124, L. 1951; amd. Sec. 1, Ch. 106, L. 1961; amd. Sec. 1, Ch. 123, L. 1963; amd. Sec. 2, Ch. 48, L. 1967.

Amendments

The 1963 amendment inserted "or airplanes" following "when using their own automobiles"; and inserted "by automobile, and at the rate of twelve cents (12¢) per air mile for the distance actually traveled by airplane."

The 1967 amendment increased mileage allowance for the use of automobiles from 8¢ to 9¢ per mile.

59-802. (4884.1) **Same—liability of approving board for exceeding authorized amount.** Whenever it shall be necessary for any state or county officer or employee to use his own automobile or airplane in the performance of any official duty where traveling expense is allowed by law, such officer or employee, except sheriffs, shall receive nine cents (9¢) per mile for each mile necessarily traveled by automobile and twelve cents (12¢) per air mile for each mile necessarily traveled by airplane unless otherwise specifically provided by law and the members of any lawful approving board shall be liable upon their official bonds, for any claim which they may allow in excess of such amount; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310.

History: En. Sec. 1, Ch. 80, L. 1923; amd. Sec. 3, Ch. 16, L. 1933; amd. Sec. 2, Ch. 121, L. 1941; amd. Sec. 2, Ch. 201, L. 1947; amd. Sec. 2, Ch. 93, L. 1949; amd. Sec. 2, Ch. 124, L. 1951; amd. Sec. 2, Ch. 106, L. 1961; amd. Sec. 2, Ch. 123, L. 1963; amd. Sec. 3, Ch. 48, L. 1967.

Amendments

The 1963 amendment inserted "or airplane" following "to use his own automobile"; inserted "by automobile and twelve cents (12¢) per air mile for each mile necessarily traveled by airplane"; and deleted a concluding sentence which read: "Provided, further, that in no case shall an automobile be used as herein provided if suitable transportation can be had by railroad or bus."

The 1967 amendment increased mileage allowance for the use of automobiles from 8¢ to 9¢ per mile.

CHAPTER 11—FEDERAL SOCIAL SECURITY ACT—COVERAGE OF CERTAIN OFFICERS AND EMPLOYEES

Section 59-1103.1. Contributions by state employees.
59-1104. Plans for coverage of employees of political subdivisions.
59-1105. Contribution account.
59-1106. Costs of administration.
59-1110. Eligibility of staff and teachers—payroll deductions.

59-1103.1. Contributions by state employees. (a) Every employee of the state whose services are covered by an agreement entered into under section 59-1103 shall be required to pay for the period of such coverage, contributions, with respect to wages (as defined in section 59-1102), equal to the amount of employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the state, or his entry upon such service, after the enactment of this act.

(b) and (c). * * * [Same as parent volume.]

History: En. as Sec. 5, Ch. 44, L. 1953 by Sec. 5, Ch. 270, L. 1955; amd. Sec. 198, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the phrase "into the contribution fund established by section 59-1105" after "of such coverage" in the first sentence in subd. (a).

59-1104. Plans for coverage of employees of political subdivisions. (a) and (b). * * * [Same as parent volume.]

(c)(1) Each political subdivision as to which a plan has been approved under this section shall pay with respect to wages (as defined in section 59-1102), at such time or times as the state agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under section 59-1102.1.

(2) Each political subdivision required to make payment under paragraph (1) of this subsection shall, in consideration of the employee's retention in, or entry upon, employment after enactment of this act, impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in section 59-1102), not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contributions from his wages as and when paid. Contributions so collected shall partially discharge the liability of such political subdivision or instrumentality under paragraph (1) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(d). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in subd. (c)(1), deleted the phrase "into the contribution fund" after "shall pay"; and, in the second

sentence in subd. (c)(2), substituted "shall partially discharge the liability" for "shall be paid into the contribution fund in partial discharge of the liability."

59-1105. Contribution account. (a) There is hereby established, in place of the fund known as the contribution fund, a contribution account in the agency fund. Such account shall consist of and there shall be deposited in such account: (1) all contributions, interest and penalties collected under sections 59-1103.1 and 59-1104; (2) all moneys appropriated thereto by the legislative assembly of the state of Montana; and (3) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the account and all other moneys received for the account from any other source. All moneys in the account shall be mingled and undivided. Subject to the provisions of this act, the state agency is vested with full power, authority and jurisdiction over the account, including all moneys and property or securities belonging thereto; it shall invest the same in investments of the same character as are permitted by section 79-1202 of this code for the investment of moneys in the long term investment fund and shall credit all interest and income heretofore or hereafter earned thereon in excess of that which, in the judgment of the state agency, may be needed for the purposes set forth in subdivision (b) of this section, to the earmarked revenue fund, social security division account, to be used by it either to defray the costs of administering this chapter, or for distribution pro rata to the contributing state departments, political subdivisions, school districts and instrumentalities, as it may determine, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this act.

(b) The contribution account shall be used and administered exclusively for the purpose of this act. Subject to the provisions of subdivision (a) of this section, withdrawals from such account shall be made for, and solely for (A) payment of amounts required to be paid to the secretary of the treasury of the United States pursuant to an agreement entered into under section 59-1103; (B) payment of refunds provided for in section 59-1103.1; and (C) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(c) From the contribution account the custodian of the account shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under section 59-1102.1 and the Social Security Act.

(d) The treasurer of the state shall pay all warrants drawn upon the state agency in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

(e) Each department of the state shall include in its operating budget for the next succeeding fiscal year, prepared and delivered to the controller in accordance with the provisions of law, an estimate of the amount which it will be required to contribute to the contribution account.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967.

Amendments

The 1963 amendment substituted "in place of the fund known as the contribution fund, a contribution account in the agency fund" for "a special fund to be known as the contribution fund" in the first sentence of subsection (a); substituted "account" for "fund" throughout the section; deleted the words "shall be established and held separate and apart from any other funds or moneys of the state and" which preceded "shall be used" in the first sentence of subsection (b); deleted the words "shall be ex officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provisions of this act and the directions of the state agency and" which followed "The treasurer of the state" at the beginning of subsection (d); and substituted "the state agency" for "it" after "warrants drawn upon" in subsection (d).

The 1967 amendment deleted former subdivisions (3) and (4) of subsection (a), which read, "(3) any property or securities and earnings thereof acquired through the use of moneys belonging to the account; (4) interest earned upon any moneys in the account; and "; renumbered the former subdivision (5) as new subdivision (3); inserted the passage "it shall invest the same * * * as it may determine" after "thereto" in new subdivision (3); and inserted "subject to the provisions of subdivision (2) of this section" after "of this act" in subsection (b).

59-1106. Costs of administration. All costs allocable to the administration of this chapter shall be charged to the earmarked revenue fund, social security division account, and so much of such costs as are not defrayed by interest and income earned upon the contributions fund which has been credited to said earmarked revenue fund, social security division account, as provided in section 59-1105, shall be paid to the state agency for deposit to the earmarked revenue fund, social security division account by each department of the state and by the participating divisions and instrumentalities and political subdivisions of the state pro rata according to their respective contributions.

History: En. Sec. 6, Ch. 44, L. 1953; amd. and redes. as Sec. 8, Ch. 44, L. 1953 by Sec. 8, Ch. 270, L. 1955; amd. Sec. 5, Ch. 248, L. 1965; amd. Sec. 2, Ch. 109, L. 1967.

Amendments

The 1965 amendment substituted "the earmarked revenue fund, social security division account" for "the general fund" after "paid to."

The 1967 amendment deleted "and paid to" after "charged to," and added "and so much of such costs * * * security division account" before "by each department."

Repealing Clause

Section 3 of Ch. 109, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 109, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 21, 1967.

59-1110. Eligibility of staff and teachers—payroll deductions. Pursuant to such certification, the staff and teachers of any such district shall be eligible for coverage under the provisions of the Federal Social Security Act, and the fiscal officer of such district shall thereafter collect the contributions required under the Federal Social Security Act, section 218, by payroll deduction from the staff and teachers and from the school district as employer; and said funds and accounts shall be deposited with the state board of equalization, or such other agency as may be designated by the legislature to administer Social Security Act coverage in this state, and held in the contributions' fund as provided by sections 59-1101 to 59-1108. For the purposes of this act, the contributions with respect to services, equivalent to the employer's tax established by the

Federal Social Security Act shall be the first obligation against any state funds received for school support by any school district, high school district or county high school, and shall first be paid therefrom.

History: En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965.

Amendment

The 1965 amendment added the last sentence.

CHAPTER 12—PERSONNEL ADMINISTRATION LAW

(Repealed—Section 9, Chapter 3, Ex. Laws of 1967)

59-1201 to 59-1215. Repealed.

Repeal

These sections (Secs. 1 to 15, Ch. 251, L. 1953), the Personnel Administration Law, were repealed by Sec. 9, Ch. 3, Ex. Laws 1967.

Study of Personnel Administration

Sections 1 to 8, Ch. 3, Laws of 1967 (Ex. S.) provided for a detailed study of personnel administration, as follows:

"Section 1. The budget director is hereby directed and authorized to enter into and make the necessary agreements and/or contracts in the name of the state of Montana, subject to the approval of the governor, with a firm, partnership, corporation or other association knowledgeable in the field of personnel administration for the purpose of preparing, after a detailed study, an effective plan for the classification of employees and the development of an equitable salary schedule.

"Section 2. Under the direction of the budget director, the firm selected to make the study will contact the heads of all agencies, departments, and institutions concerned and prepare a classification plan for all positions, grouping together under common title those positions having approximately the same duties and responsibilities and the same requirements of training and experience. The specifications for each class of positions shall include a title, a description of duties and responsibilities, the minimum requirements of education and experience and all other necessary qualifications.

"Section 3. The study shall provide for all position classifications a compensation plan based on the amount of money available, the cost of living and the prevailing rates of pay in government and private employment in the locality of the agency, department or institution. The compensation plan will provide for initial, intermediate and maximum rates of pay for all position classifications.

"Section 4. The classification of positions to which this act applies will include all positions in all state agencies, departments and institutions except:

"(1) Officers and employees of the legislative branch;

"(2) State officers elected by popular vote and persons appointed to fill vacancies in such elective offices;

"(3) Members of boards and commissions appointed by the governor or legislature;

"(4) The agency head, one (1) principal assistant or deputy and one (1) private secretary for each state agency;

"(5) Judges of the judicial branch;

"(6) Attorneys admitted to practice before the supreme court of Montana and serving as legal counsel;

"(7) Research and teaching personnel, officers, and student employees of a unit of the Montana university system;

"(8) Persons employed in a professional or scientific capacity to make or conduct a temporary and special investigation or examination on behalf of the governor, the legislature or a legislative committee;

"(9) Officers or members of the militia.

"Section 5. All state agencies, departments and institutions are hereby directed to assist and co-operate with the budget director and the contracted firm in the preparation of the study as defined in this act.

"Section 6. The budget director shall have the authority to employ such clerical and other employees deemed necessary to properly administer this act.

"Section 7. The governor shall include in his budget recommendations to the forty-first legislative assembly appropriation requests sufficient to finance the compensation plan.

"Section 8. There is appropriated from the general fund to the budget director ninety-nine thousand five hundred dollars ($99,500) for the biennium ending June 30, 1969, for the purpose specified in this act. In addition, there is hereby appropriated all federal and private moneys that may become available for the purpose specified in this act."

CHAPTER 13—FACSIMILE SIGNATURES OF PUBLIC OFFICIALS

59-1301. Definitions.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Facsimile Signatures of Public Officials Act: Florida and Nevada.

TITLE 60—OIL AND GAS

Chapter 1. Conservation of oil and gas—commission, 60-145, 60-147.
2. Petroleum products—standards—regulation of manufacture and distribution, 60-223 to 60-233.

CHAPTER 1—CONSERVATION OF OIL AND GAS—COMMISSION

Section 60-145. Privilege and license tax, quarterly statements, penalties—drilling permit fees—oil and gas conservation moneys.
60-147. Transfer of jurisdiction and record.

60-124. Waste of oil and gas prohibited.

Private Rights

It is the very essence of conservation that private rights be respected, so that in laying down well spacing regulations under section 60-129, subsection (C), the correlative rights of fringe owners must also be considered by the oil and gas conservation commission. Pattie v. Oil & Gas Conservation Commission, 145 M 531, 402 P 2d 596.

60-127. Powers and duties of commission.

Correlative Rights

Under section 60-129, subsection (C), the oil and gas conservation commission has the authority and duty to consider correlative rights and private interests in making regulatory orders establishing spacing units with respect to fringe owners, but it does not have the authority to adjudicate disputes involving those rights. Pattie v. Oil & Gas Conservation Commission, 145 M 531, 402 P 2d 596.

References

Cited in Yoder v. Assiniboine & Sioux Tribes of Fort Peck Indian Reservation, 339 F 2d 360, 361.

60-129. Well spacing units—orders.

Adjacent Landowners

Where the landowners lie on the projected edge of a petroleum reservoir, subsection (C) of this section clearly indicates that an exception may be granted where the requirement to drill the well at the authorized location on the spacing units would be inequitable or unreasonable. Pattie v. Oil & Gas Conservation Commission, 145 M 531, 402 P 2d 596.

Private Rights

Subsection (C) of this section is sufficiently broad to permit the oil and gas conservation commission to consider private rights in making orders. Pattie v. Oil & Gas Conservation Commission, 145 M 531, 402 P 2d 596.

References

Cited in Yoder v. Assiniboine & Sioux Tribes of Fort Peck Indian Reservation, 339 F 2d 360, 361.

60-130. Pooling of interest within spacing unit, etc.

Indian Lands

In suit in federal court by Indian tribes to restrain the Montana oil and gas conservation commission from enforcing an order "pooling" lands owned by the Indian tribes with lands of another to form a "spacing unit," the matter in controversy was not the lands or the royalties, but the regulation and the right to be free from it, and evidence adduced by the Indian tribes, which did not show facts supporting determination that lands or expected royalties exceeded $10,000, failed to show jurisdictional amount in controversy. Yoder v. Assiniboine & Sioux Tribes of Fort Peck Indian Reservation, 339 F 2d 360, 363.

60-131. Agreements for development and operation of pool, etc.

References

Pattie v. Oil & Gas Conservation Commission, 145 M 531, 402 P 2d 596.

60-134. Rehearing.

References

Pattie v. Oil & Gas Conservation Commission, 145 M 531, 402 P 2d 596.

60-135. Court review of order of commission by suit for injunction, etc.

References

Pattie v. Oil & Gas Conservation Commission, 145 M 531, 402 P 2d 596.

60-139. Repealed.

Repeal

This section (Sec. 16, Ch. 238, L. 1953), relating to property and records of the former oil conservation board and of the board of railroad commissioners, was repealed by Sec. 242, Ch. 147, Laws 1939.

60-145. Privilege and license tax, quarterly statements, penalties—drilling permit fees—oil and gas conservation moneys. A to C. * * * [Same as parent volume.]

D. All money collected under the provisions of this act shall be deposited in the earmarked revenue fund by the state treasurer of the state of Montana, and shall be used for the purpose of paying all expenses of said commission and for no other purpose; all such moneys shall be used by said commission subject to the approval of the controller and biennial appropriations by the legislative assembly. Upon the termination of said commission any such money remaining shall be paid over to the general fund of the state. All accounts and expenditures of said commission shall be certified by the commission, approved as provided by law, and paid by the state treasurer.

E. The commission may appoint a secretary and employ such other persons as experts, assistants, clerks, and stenographers, as may be deemed necessary to perform the duties that may be required of it, and fix their compensation; provided, however, that the total expenditures of such commission shall not exceed in the aggregate during any fiscal year, the amount actually collected under the provisions of subsection A. of this section, above, plus any amount appropriated for that purpose. The members of the commission shall be allowed their several expenses incurred in the discharge of their duties, as is elsewhere provided in this act.

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund" in the first sentence of subsection D for "a special fund to be known as the 'Oil and Gas Conservation Fund'"; deleted the words "the fund to be raised" which preceded "shall be used for the purpose" in the first sentence of subsection D; substituted "such moneys" for "moneys from this fund" in the final clause of the first sentence of subsection D; substituted "such money remaining" for "balance remaining in said fund" in the second sentence of subsection D; deleted the words "upon warrants drawn by the state auditor out of the oil and gas conservation fund" from the end of subsection D; and deleted the words "or otherwise accruing to said fund" from the end of the first sentence of subsection E.

60-147. Transfer of jurisdiction and record. On or before the effective date, as hereinafter provided, all jurisdiction, control, supervision, custody,

property and records of the said station shall be and become transferred from the jurisdiction of the bureau to the commission, and the said commission shall, after the effective date hereinafter provided, assume the said jurisdiction, control, supervision and custody of all property, real and personal, and records located at or pertaining to the said station; that the property so transferred shall be and become the property of the commission; that the operation and maintenance of the said station shall be done and performed by the commission from and after the said effective date hereinafter provided, and the necessary expenditures therefor shall be paid from oil and gas conservation commission moneys, in the earmarked revenue fund upon proper vouchers, by the state treasurer; that the said transfer of property, real, personal, or mixed, and the records from the bureau to the commission shall be made without lien, encumbrance, or obligation of any sort, upon said property and records, and it is the express intention hereby to transfer said property and records to the commission free and clear.

History: En. Sec. 2, Ch. 32, L. 1957; amd. Sec. 161, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "oil and gas conservation commission moneys, in the earmarked revenue fund" for "oil and gas conservation commission fund."

CHAPTER 2—PETROLEUM PRODUCTS—STANDARDS—REGULATION OF MANUFACTURE AND DISTRIBUTION

Section 60-223. Petroleum products dealers—definition of terms.
60-224. License required as a condition precedent to the right to do business.
60-225. Place of business license.
60-226. Pump license fees.
60-227. Petroleum and liquefied petroleum meter license fees.
60-228. Petroleum and liquefied petroleum vehicle tank license fees.
60-229. Dispensation of petroleum products.
60-230. Dispensation of liquefied products.
60-231. Temperature correction of liquefied petroleum to sixty degrees (60°) Fahrenheit when sold to a consumer.
60-232. Rules, regulations and standards.
60-233. Penalty for violation of this act.

60-201, 60-202. (3913.1, 3913.2) Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 109, L. 1927; Secs. 2, 3, Ch. 131, L. 1955; Secs. 1, 2, Ch. 96, L. 1957; Sec. 1, Ch. 146, L. 1961; Sec. 1, Ch. 220, L. 1961), relating to the licensing of petroleum products dealers, were repealed by Sec. 14, Ch. 153, Laws 1965. For present law, see secs. 60-223 to 60-233.

60-223. Petroleum products dealers—definition of terms. Meaning of terms when used in this act: (1) The terms "state sealer" and "deputy sealer" mean, respectively, the commissioner of agriculture of the state of Montana and his deputy sealers of weights and measures of the state of Montana.

(2) The words "sell" and "sale" shall also mean barter and exchange.

(3) The term "dealer" means all persons, firms, copartnerships, corporations, trusts or agencies.

(4) A petroleum dealer is a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer, or in the

business of selling or offering or advertising for sale or in the business of refining or manufacturing or keeping for sale within the state of Montana any gasoline, kerosene, distillate, road oil, fuel oil, lubricating oil and greases, or any oil or gas or oil and gas product, except as otherwise defined as a liquefied petroleum dealer in subsection five (5).

(5) A liquefied petroleum dealer is a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer, or in the business of selling or offering or advertising for sale or in the business of refining or manufacturing or keeping for sale within the state of Montana any petroleum product composed predominately of any of the following hydrocarbons, or mixtures thereof: Propane, propylene, butanes (normal butane or isobutane), and butylenes.

History: En. Sec. 1, Ch. 153, L. 1965.

Title of Act

An act to provide for the licensing and regulation of all petroleum dealers and liquefied petroleum dealers who sell or or offer to sell to a consumer and the licensing of any device and the regulation of its use when used for the purpose of delivering or distributing such products as are sold or offered for sale by such dealers; repealing sections 60-201 and 60-202, R. C. M. 1947.

60-224. License required as a condition precedent to the right to do business. It shall be a violation of this act for any petroleum dealer or liquefied petroleum dealer to do business in the state of Montana until a nontransferable license has been issued to said dealer by the state sealer. Such license shall be obtained by the dealer by making application to the state sealer upon such blank forms as may be provided by the state sealer for the right to do business in the state of Montana, and after the application has been made and filed the license, without fee, shall be issued. Any dealer who has not applied for and been issued a license for the right to do business in the state of Montana by the state sealer and who is found selling or offering for sale or delivering or distributing to a consumer shall, upon conviction, be fined as provided by this act, and any vehicle tank, or vehicle tank and meter, or any other measuring device used by said dealer for such delivery or distribution may be confiscated and seized as evidence by the state sealer or his deputy sealers. The state sealer or his deputy sealers shall not be liable to the owner or any other persons, firms, copartnerships, corporations, trusts or agencies for damages, directly or indirectly, caused by or resulting from such seizure.

History: En. Sec. 2, Ch. 153, L. 1965.

60-225. Place of business license. Each petroleum dealer or liquefied petroleum dealer shall pay a license fee of two dollars ($2) for each place of business, but the fee may be deducted from any weight or measuring device test fee or license fee required by this act, or any other act, relating to weights and measures.

History: En. Sec. 3, Ch. 153, L. 1965.

60-226. Pump license fees. Each petroleum dealer shall pay a license fee of two dollars ($2) for each gasoline pump, diesel pump or fuel oil pump measuring device.

History: En. Sec. 4, Ch. 153, L. 1965.

60-227. **Petroleum and liquefied petroleum meter license fees.** All petroleum vehicle tank meters and bulk petroleum meters of two and one-half (2½) inches and under, six dollars ($6). All two and one-half (2½) inch and under petroleum meters for more than one fluid, ten dollars ($10). All bulk petroleum meters over two and one-half (2½) inch, ten dollars ($10). All petroleum meters over two and one-half (2½) inch for more than one fluid, fifteen dollars ($15). All liquefied petroleum liquid meters fifteen dollars ($15).

History: En. Sec. 5, Ch. 153, L. 1965.

60-228. **Petroleum and liquefied petroleum vehicle tank license fees.** The license fee for all petroleum or liquefied petroleum vehicle tanks without meters used for distribution of such products shall be as follows: Up to and including two hundred (200) gallons, eight dollars ($8); over two hundred (200) and including three hundred (300) gallons, ten dollars ($10); over three hundred (300) and including five hundred (500) gallons, twelve dollars ($12); over five hundred (500) and including one thousand (1,000) gallons, sixteen dollars ($16); over one thousand (1,000) and including two thousand (2,000) gallons, twenty dollars ($20); for each additional one thousand (1,000) gallons over two thousand (2,000) gallons, four dollars ($4).

All licenses shall be annual and nontransferable and shall expire December 31. There shall be an additional charge of fifty per cent (50%) on all license fees, required by this act, that are not paid before March 1 of each year, where the vehicle tank, or meter, or measuring device is in use. If such fee is not paid the equipment shall be sealed and removed from service, by the state sealer or his deputy sealers, and it shall be a violation of this act for anyone to use the device or break the seal until all such fees have been paid.

History: En. Sec. 6, Ch. 153, L. 1965.

60-229. **Dispensation of petroleum products.** It shall be unlawful to make hose delivery from petroleum vehicle tanks unless the tanks have been calibrated by the state sealer or his deputy sealers. Part of a compartment delivery can only be made by an approved, calibrated and sealed meter or an approved can. Gauge stick measurement will not be permitted. All tank markers must be positioned and sealed as provided by the state sealer. The state sealer shall, by proper regulation, fix fees for retesting meters or measuring devices or vehicle tanks used for distribution to a consumer by petroleum or liquefied petroleum dealers, and for any other special service rendered.

History: En. Sec. 7, Ch. 153, L. 1965.

60-230. **Dispensation of liquefied products.** It shall be unlawful to sell or deliver liquefied petroleum to a consumer, as a liquid, except as provided by this act. Full compartment sales or deliveries may only be made in a manner that shall be provided by the state sealer. All other sales or deliveries may only be made through a meter which has been

approved, calibrated and sealed by the state sealer or his deputy sealers; or by weight, unless otherwise provided by the state sealer.

History: En. Sec. 8, Ch. 153, L. 1965.

60-231. Temperature correction of liquefied petroleum to sixty degrees (60°) Fahrenheit when sold to a consumer. It shall be a violation of this act to sell or offer for sale or deliver liquefied petroleum to a consumer, as a liquid or by liquid measurement, the measurement of which has not been temperature corrected to sixty degrees (60°) Fahrenheit, unless otherwise provided by the state sealer. Temperature correction shall only be made by means of an automatic compensating device which has been approved, calibrated, and sealed by the state sealer or his deputy sealers; or by weight as provided by the state sealer.

History: En. Sec. 9, Ch. 153, L. 1965.

60-232. Rules, regulations and standards. The state sealer is hereby authorized to promulgate and adopt such rules, regulations and standards as he shall deem necessary for the administration and enforcement of this act.

History: En. Sec. 10, Ch. 153, L. 1965.

60-233. Penalty for violation of this act. Any dealer who by himself or by his servant or agent, or as the servant or agent of another person, violates any provision of this act or any rule or regulation adopted hereunder shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than twenty-five ($25) nor more than one hundred ($100) dollars for each violation.

History: En. Sec. 11, Ch. 153, L. 1965.

Saving Clause

Section 12 of Ch. 153, Laws 1965 read "Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

Separability Clause

Section 13 of Ch. 153, Laws 1965 read "Severability clause. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 14 of Ch. 153, Laws 1965 read "Repealing clause. Section 60-201 and 60-202, R. C. M. 1947, are repealed."

Effective Date

Section 15 of Ch. 153, Laws 1965 read "Effective date. This act is effective January 1, 1966."

TITLE 61—PARENT AND CHILD

Chapter 2. Adoption, 61-211, 61-212.

CHAPTER 1—PARENT AND CHILD—CHILDREN BY BIRTH AND BY ADOPTION

61-105. (5834) Custody of legitimate child.

Basis for Preference

District court did not abuse its discretion in awarding custody of two younger children to father, who had moved to California, since children had a good home with their father and paternal grandparents, were well cared for and happy, were given more than adequate educational and religious training and had lived with their father for more than five years. Anderson v. Anderson, 145 M 244, 400 P 2d 632.

CHAPTER 2—ADOPTION

Section 61-211. Interlocutory and final decree.
61-212. Effect of final decree.

61-203. Who may adopt.

Res Judicata

Where the mother, of a child born out of wedlock, joined in and agreed to a petition allowing the natural father and his wife to adopt the child, the proceedings and resulting decree were res adjudicata and the mother of the child could not later attack the decree on the grounds that the father did not fit specifically any of the categories provided by this section. In re Adoption of Curtis, 143 M 330, 390 P 2d 209.

61-204. Venue.

Jurisdiction

This section relates to venue and not jurisdiction, and even though only one of joint petitioners in an adoption proceeding was a resident of the county in which the proceeding was held, this was sufficient to confer jurisdiction. In re Adoption of Curtis, 143 M 330, 390 P 2d 209.

61-205. Persons required to consent to the adoption.

Estoppel

Where the mother, of a child born out of wedlock, joined in and agreed to a petition allowing the natural father and his wife to adopt the child, the mother of the child was estopped from attacking the resulting decree of adoption two years later. In re Adoption of Curtis, 143 M 330, 390 P 2d 209.

61-211. Interlocutory and final decree. Upon examination of the report described in section 61-209, if such report has been deemed necessary by said court, and after hearing, the court may issue an interlocutory decree giving the care and custody to the petitioners pending the further order of the court.

When a petition has been filed seeking the adoption of a child, the court must cause service of process to be made on the parent or parents of the child, except in those cases hereinafter provided, in the following manner:

The court shall order a citation to issue to the parent or parents in the name of the state of Montana and under the seal of the court, directing such parent or parents to appear in court at a time to be fixed by the

court, and show cause why said petition should not be granted. Such citation, together with a copy of the petition for adoption, shall be personally served upon such parent or parents. If, however, any such parent or parents cannot be found within this state, service may be had by publication of a copy of said citation in the manner provided for the publication of summons by Rule 4, M.R.Civ.P. If after completion of such service, any parent so served does not appear, the court may act upon the petition, and the order of the court thereon shall be binding upon all persons so served; provided that any such person shall have the right to appeal from the order in the manner and form provided for appeals from a judgment in civil actions.

The petitioners and the child shall appear at said hearing, unless the presence of the child is waived by the court.

Service of process, as aforesaid, need not be made on a parent who has consented in writing to an adoption; or on the father of an illegitimate child; or on any parent whose consent to adoption is not required under the provisions of section 61-205; and service of process shall not be made on any parent who has relinquished his child to the state department of public welfare or an adoption agency licensed by the state department of public welfare.

After an interlocutory decree, as aforesaid, has been issued by the court, the investigator, if any, shall observe the child in his adoptive home and report in writing to the court within six (6) months on any circumstances or conditions which may have a bearing on the adoption. After six (6) months from the date of the interlocutory decree, the petitioners may apply to the court for a final decree of adoption. The court shall thereupon set a time and place for final hearing. Notice of the time and date of the hearing shall be served on the state department of public welfare, and the investigator, if any. The investigator, if any, shall file with the court a written report of his findings and recommendations and certify that the described investigation, if any, has been made since the granting of the interlocutory decree. After hearing on said application, at which the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court may enter a final decree of adoption if satisfied that the adoption is for the best interests of the child. If the adoption is denied, an appropriate order shall be made as to the future custody of said child.

History: En. Sec. 11, Ch. 240, L. 1957; amd. Sec. 4, Ch. 199, L. 1961; amd. Sec. 1, Ch. 2, L. 1963.

Amendment

The 1963 amendment corrected a typographical error in the first paragraph and, in the third paragraph, substituted the reference to Rule 4 of the Montana Rules of Civil Procedure for a reference to former section 93-3014.

61-212. Effect of final decree. (1) After the final decree of adoption is entered the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the adoptive parents adopting such child and the kindred of the adoptive parents. From the

date of the final decree of adoption, the child shall be entitled to inherit real and personal property from and through the adoptive parents and the kindred of the adoptive parents in accordance with the statutes of descent and distribution, and the adoptive parents and their kindred shall be entitled to inherit real and personal property from and through the child in accordance with said statutes.

(2) After a final decree of adoption is entered, the natural parents and the kindred of the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent shall be relieved of all parental responsibilities for said child and have no rights over such adopted child or to his property by descent and distribution.

History: En. Sec. 12, Ch. 240, L. 1957; amd. Sec. 1, Ch. 102, L. 1965.

Amendment

The 1965 amendment inserted "and the kindred of the adoptive parents" following "through the adoptive parents" and "and their kindred" following "and the adoptive parents" in the second sentence of subsection (1); and inserted "and the kindred of the natural parents" following "the natural parents" near the beginning of subsection (2).

References

In re Jones' Estate, 146 M 439, 408 P 2d 482.

TITLE 62—PARKS AND PUBLIC RECREATION

Chapter 3. State parks, 62-301, 62-304, 62-305, 62-307, 62-310, 62-311, 62-314.
4. Development of outdoor recreational resources, 62-401 to 62-404.
5. Horse racing, 62-501 to 62-514.

CHAPTER 2—CITY, TOWN AND SCHOOL DISTRICT CIVIC CENTERS, PARKS AND RECREATIONAL FACILITIES

62-201. (5159) **Public parks and grounds, civic and youth centers, etc.**

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

CHAPTER 3—STATE PARKS

Section 62-301. Purpose.
62-304. Powers and duties.
62-305. Disposal of fees and charges.
62-307. Connecting roads.
62-310. Establishment of state scientific and recreational park.
62-311. Rules and regulations governing use.
62-314. Penalties for violation of state park regulations.

62-301. Purpose. That for the purpose of conserving the scenic, historic, archaeologic, scientific and recreational resources of the state, and of providing for their use and enjoyment, thereby contributing to the cultural, recreational and economic life of the people and their health, the state fish and game commission (hereinafter referred to as commission) is hereby vested with the duties and powers hereinafter set forth.

History: En. Sec. 1, Ch. 48, L. 1939; amd. Sec. 1, Ch. 178, L. 1953; amd. Sec. 1, Ch. 69, L. 1965.

Amendment

The 1965 amendment substituted "state fish and game commission" for "state highway commission."

62-304. Powers and duties. The commission is hereby authorized and directed to make a study to determine the scenic, historic, archaeologic, scientific and recreational resources of the state, and shall have power by purchase, lease, agreement, or by acceptance of donations, or condemnation, to acquire for and in the name of the state, any such areas, sites or objects which in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historical sites. The commission shall also have power in its discretion to receive and accept in the name of the state, in fee or otherwise, any such areas, sites, or objects conveyed, entrusted, donated, or devised to the state, and with like discretion to accept gifts, bequests, or contributions of money or other property to be expended or used for any of the purposes of this act; provided, that no contract shall be entered into or other obligation incurred under the provisions of this act until moneys have been appropriated therefor by the legislature or are otherwise made available as herein provided. The commission shall also have jurisdiction,

custody and control of all state parks, recreational areas, public camping grounds, historical sites, and monuments which are now under the control and management of the state, except wayside camps and other public conveniences acquired, improved and maintained by the state highway commission and contiguous to the state highway system.

History: En. Sec. 4, Ch. 48, L. 1939; amd. Sec. 1, Ch. 46, L. 1955; amd. Sec. 2, Ch. 69, L. 1965.

Amendment

The 1965 amendment substituted "except" for "including" before "wayside camps and other public conveniences" near the end of the section.

Acquisition of Buffalo Jump Site

Chapter 70, Laws of 1965, authorized the board of land commissioners to acquire a particular tract known as the site of a buffalo jump and to turn the tract over to the fish and game commission. The act read: "An act to permit the state board of land commissioners to acquire a tract of land which is of archeological, historic or scientific interest and should be preserved for posterity; providing for an effective date.

"Section 1. The state board of land commissioners is hereby authorized to acquire Section 34, Township 1 N, Range 2E, M.P.M., which is of archeological, historic or scientific interest and should be preserved for the benefit of the people. The acquisition of such land may be by gift, bequest, purchase, lease, or exchange of other state land of equal value. The state board of land commissioners shall take title to such land in the name of the state for the use and benefit of the agency responsible for administering state parks. Upon acquisition of such land, the state agency responsible for administering state parks is hereby authorized to enter into contracts or agreements with the federal government, other departments or agencies of the state government, county and municipal government, as may be necessary to the proper care and management of the object to be protected and preserved for posterity.

"Section 2. This act shall be in full force and effect after its passage and approval. Approved February 26, 1965."

62-305. Disposal of fees and charges. The commission shall have power to levy and collect reasonable fees or other charges for the use of such privileges and conveniences as may be provided, and to grant such concessions as it may deem advisable. All moneys derived from the activities of the commission shall be deposited in the state treasury in the earmarked revenue fund to the credit of the commission.

History: En. Sec. 5, Ch. 48, L. 1939; amd. Sec. 26, Ch. 147, L. 1963; amd. Sec. 1, Ch. 87, L. 1967.

Amendments

The 1963 amendment substituted "except from conditional gifts" for "and from unconditional gifts" near the beginning of a former second sentence; substituted "the general fund" at the end of the same sentence for "the state park fund, which fund is hereby created, and shall constitute a continuing fund to be used and expended by the commission for any of the purposes of this act"; and added a former third sentence.

The 1967 amendment substituted the present last sentence of this section for the former last two sentences which read "All moneys derived from the activities of the commission, except from conditional gifts, donations, bequests and endowments, shall be deposited in the state treasury to the credit of the general fund. Moneys derived from conditional gifts, donations, bequests and endowments may be deposited in the federal and private revenue fund."

62-307. Connecting roads. The state highway commission is hereby authorized to construct, improve and maintain with state highway funds connecting roads between existing state highways and state parks; provided, that each such road shall not exceed a total length of ten (10) miles.

History: En. Sec. 7, Ch. 48, L. 1939; amd. Sec. 2, Ch. 178, L. 1953; amd. Sec. 3, Ch. 69, L. 1965.

Amendment

The 1965 amendment substituted "state parks" immediately before the proviso for "lands and properties under the jurisdiction of the commission."

62-310. Establishment of state scientific and recreational park. That in order to preserve and protect the biological station grounds hereafter referred to, and to remove fire hazards and the danger of other encroachments tending to detract from the scientific values and uses thereof, the state fish and game commission is authorized to maintain a state scientific and recreational park on a suitable area to be designated by it not exceeding fifteen (15) acres at the southeast portion of the lands granted by the United States of America to the state of Montana for the use of the university of Montana for biological station purposes.

History: En. Sec. 1, Ch. 108, L. 1941; amd. Sec. 3, Ch. 178, L. 1953; amd. Sec. 4, Ch. 69, L. 1965.

Amendment

The 1965 amendment substituted "state fish and game commission" for "state highway commission"; and deleted the words "established and" before "maintain a state scientific and recreational park."

62-311. Rules and regulations governing use. The state fish and game commission shall make such rules and regulations governing the park's use, occupancy and the protection of the remaining lands of said grant that the use of all of said lands for biological station purposes shall be promoted and continued; and the park itself shall be so maintained as to develop and encourage public interest in the scientific and biological resources of the area; provided, however, that nothing herein contained shall operate to prevent the use of the area within the said park for biological station purposes whenever it becomes useful or necessary for such purposes.

History: En. Sec. 2, Ch. 108, L. 1941; amd. Sec. 4, Ch. 178, L. 1953; amd. Sec. 5, Ch. 69, L. 1965.

Amendment

The 1965 amendment deleted the words "That if and when said park is established" at the beginning of the section; substituted "state fish and game commission" for "state highway commission"; substituted "the park's use" for "its use"; and deleted "established and" before "maintained as to develop."

62-314. (1842.3) **Penalties for violation of state park regulations.** Any person who shall injure or damage any state or private property thereon or therein, or shall violate any of the regulations made by the state fish and game commission relating to the state parks, shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars ($500) or be imprisoned in the county jail for not more than six (6) months.

History: En. Sec. 3, Ch. 111, L. 1929; amd. Sec. 5, Ch. 178, L. 1953; amd. Sec. 6, Ch. 69, L. 1965.

Amendment

The 1965 amendment deleted "in any unusual way" after "injure or damage"; and substituted "state fish and game commission" for "state highway commission."

CHAPTER 4—DEVELOPMENT OF OUTDOOR RECREATIONAL RESOURCES

Section 62-401. Legislative findings—purpose of act.
62-402. State agency for Land and Water Conservation Fund Act.
62-403. Compliance with federal act authorized—powers of commission.
62-404. Advisory and planning committee—composition and functions.

62-401. Legislative findings—purpose of act. Montana is uniquely endowed with scenic landscapes and areas rich in recreational value. This outdoor heritage enriches the lives of citizens, attracts new residents and businesses to the state, and is of major significance to the expanding tourist industry. It is the purpose of this act to give authority to the Montana state fish and game commission to plan and develop outdoor recreational resources in the state which authority shall permit receiving and expending funds including federal grants for this purpose.

History: En. Sec. 1, Ch. 235, L. 1965.

Title of Act

An act to permit the Montana fish and game commission to plan and develop outdoor recreational resources in the state, which authority shall permit receiving and expending funds including federal grants for this purpose; creating an outdoor recreation advisory and planning committee; providing that the act is effective on passage and approval.

62-402. State agency for Land and Water Conservation Fund Act. The fish and game commission is hereby designated as the state agency to represent and act for the state for the purpose of implementing the "Land and Water Conservation Fund Act of 1965."

History: En. Sec. 2, Ch. 235, L. 1965.

Compiler's Note

The Land and Water Conservation Fund Act of 1965 may be found at 16 U. S. Code 4601-4 to 4601-11.

62-403. Compliance with federal act authorized—powers of commission. The fish and game commission shall do those things necessary to comply with the provisions of the "Land and Water Conservation Fund Act of 1965." Among other things, the fish and game commission may

(1) Prepare a comprehensive statewide outdoor recreational plan which shall contain

(a) An evaluation of the demand for and supply of outdoor recreational resources and facilities in Montana, and

(b) A program for implementation of the plan.

(2) Accept and administer moneys paid by the secretary of the interior for approved projects.

(3) Contract with other state agencies, cities, counties and other political subdivisions of the state, private organizations, and agencies of the federal government.

(4) Acquire, other than by eminent domain, and develop outdoor recreational areas and facilities, and land and waters, and interests in land and waters for such areas and facilities.

(5) For the purpose of implementing the "Land and Water Conservation Fund Act of 1965," co-ordinate its activities with, and represent the interests of, all agencies of state, city, county, and other governmental units with outdoor recreational responsibilities.

History: En. Sec. 3, Ch. 235, L. 1965.

62-404. Advisory and planning committee—composition and functions. There is created the outdoor recreation advisory and planning committee consisting of not more than twenty (20) members. The members of the committee shall be appointed by the governor and shall serve at the

pleasure of the governor. The committee shall elect a chairman and any other necessary officers.

The function of the committee is to advise and consult with the fish and game commission on all phases of this act.

History: En. Sec. 4, Ch. 235, L. 1965.

Effective Date

Section 5 of Ch. 235, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 8, 1965.

CHAPTER 5—HORSE RACING

Section 62-501. Horse racing commission created—appointment—removal—claims.
62-502. Definitions.
62-503. Chairman—quorum—costs.
62-504. Commission's annual report—public record.
62-505. Duties of commission and licensees—license fee.
62-506. Authority of commission.
62-507. License—application therefor—type and number of races—fee per day—refund—cancellation—hearing.
62-508. Penalty for violations of law—power of commission.
62-509. Race exclusively for Montana bred horses—bonus for winner.
62-510. Public liability insurance.
62-511. Parimutuel betting—other betting illegal.
62-512. Distributions of deposits—breakage.
62-513. Licensee's right to withhold deposits.
62-514. Gross receipts—commission's percentage—collection and allocation.

62-501. Horse racing commission created—appointment—removal—claims. There is hereby created the Montana horse racing commission, to consist of three (3) members, who shall be citizens, residents and qualified electors of the state of Montana. At least one (1) member shall be a breeder of thoroughbred or quarter horses.

The members of said commission shall be appointed by the governor within thirty (30) days after this act takes effect, and one (1) for a term to expire on the Thursday following the second Monday in January, 1966, and one (1) for a term to expire on the Thursday following the second Monday in January, 1967, and one (1) for a term to expire on the Thursday following the second Monday in January, 1968, and upon the expiration of the term of any member of said commission, the governor shall appoint a successor for a term of three (3) years with the consent of the senate.

Each member shall hold office until his successor is appointed and qualified. Vacancies on the commission shall be filled by appointment to be made by the governor for the unexpired term.

Any member may be removed from office by the governor for cause after a public hearing. Notice of said hearing shall fix the time and place of hearing and shall specify the charges. Copy of the notice of hearing shall be served on the member by mailing the same to the member at his last known address at least ten (10) days before the date fixed for said hearing.

History: En. Sec. 1, Ch. 196, L. 1965.

Title of Act

An act establishing a horse racing commission and defining its powers and duties, repealing sections 94-2425, 84-6501, R. C. M. 1947; providing for an effective date

62-502. Definitions. As used in this act.

(1) "Commission" means Montana horse racing commission.

(2) "Persons" means individuals, firms, corporations and associations.

(3) "Race meet" means and includes any exhibition of thoroughbred, purebred, and/or registered horse racing where the parimutuel system of wagering is used. Singular shall include the plural and plural shall include the singular; and words importing one gender shall be regarded as including all other genders.

History: En. Sec. 2, Ch. 196, L. 1965.

62-503. Chairman—quorum—costs. The commission shall organize by electing one (1) of its members chairman. Two (2) members of the commission shall constitute a quorum for the transaction of any and all business of the commission.

The commission may incur all such costs, charges and expenses as are reasonably necessary in carrying out the intent and purposes of this act.

History: En. Sec. 3, Ch. 196, L. 1965.

62-504. Commission's annual report—public record. The commission shall keep detailed records of all meetings and of the business transacted therein, and all licenses applied for and issued, reports of which shall be embodied in an annual report which the commission shall prepare and submit to the governor on or before the thirty-first day of December of each year. Said annual report shall cover the activities of the commission for the preceding year in addition to the aforementioned.

All records of the commission shall be public records, and as such subject to public inspection.

History: En. Sec. 4, Ch. 196, L. 1965.

62-505. Duties of commission and licensees—license fee. It shall be the duty of the commission, as soon as possible after its organization, to prepare and promulgate a complete set of rules and regulations to govern race meets and the parimutuel system. Such rules and regulations shall include, but shall not be limited to the following, to wit: definitions, auditing and supervision of the parimutuel system, corrupt practices, supervision, duties and responsibilities of the presiding steward, racing secretary and other racing officials, licensing of all personnel who have any function whatsoever to do with the substantive operation of racing, the establishment of dates for race meets and meetings in the best interests of breeding and racing in the state of Montana, and the veterinary practices and standards which must be observed in connection with race meets. Rules pertaining to medication, testing of horses, examining horses prior to racing, and banning horses from running shall meet the approval of an advisory committee of the Montana veterinary medical association. Every person who shall participate in any race meet shall be licensed and a fee will be charged. The annual license fee for each person required to be licensed shall not exceed ten dollars ($10) which shall be paid to the commission and used for operating expenses of the commission. It

shall be the duty of each person holding a license under the authority of the act, and every owner, trainer, jockey, and attendant at any race course in this state, to comply with this act and with all rules and regulations promulgated and all orders issued by the commission.

History: En. Sec. 5, Ch. 196, L. 1965; amd. Sec. 1, Ch. 216, L. 1967.

Amendments

The 1967 amendment added the present fourth sentence and deleted a former second paragraph which read, "It shall be unlawful for any owner, trainer, or jockey, to participate in any race meet without first securing and having in full force and effect, an annual license therefor from the commission. The license fee for such annual license shall be five dollars ($5), which shall be paid to the commission and used for operating expenses of the commission. All claims and expenditures under this act shall be first audited and passed upon by the commission. When they are approved, they shall be paid from the license fee. If the license fees exceed the commission expenses, the excess shall be deposited to the state general fund, provided that in no event shall commission expenses be paid in an amount in excess of the aforementioned license fees."

62-506. Authority of commission. The commission created by this act is hereby authorized and it shall be its duty to license, regulate, and supervise all race meets held in this state under the terms of this act, and to cause the various places where race meets are held to be visited and inspected at least once a year.

History: En. Sec. 6, Ch. 196, L. 1965.

62-507. License—application therefor—type and number of races—fee per day—refund—cancellation—hearing. It shall be unlawful for any person to hold any race meet in this state without having first obtained and having in force and effect a license issued by the commission as in this act provided. Every person making application for a license to hold a race meet, under the provisions of this act, shall file an application with the commission which shall set forth the time, place and number of days such license will continue, and such other information as the commission may require.

No person who has been convicted of any crime involving moral turpitude shall be issued a license of any kind, nor shall any license be issued to any person who has violated the terms or provisions of this act, or any of the rules and regulations of the commission, or who has failed to pay any of the fees, taxes or moneys required under the provisions of this act.

All applications to hold race meets shall be submitted to the commission which shall act upon such applications within thirty (30) days. The commission shall be the sole judge of whether or not the race meet shall be licensed and the number of days the meet shall continue.

It shall be the duty of the commission to require that fairs conducting race meets in conjunction with their regularly scheduled fair shall meet the requirements of the rules and regulations set up by the racing commission prior to granting them their license. Any unexpired license held by any person who violates any of the provisions of this act, pursuant thereto, or who fails to pay to the commission any and all sums required under the provisions of this act, shall be subject to cancellation and revocation by the commission. Such cancellation shall be made only after a summary hearing before the commission, of which three (3) days' notice,

in writing, shall be given the licensee, specifying the grounds for the proposed cancellation, and at which hearing the licensee shall be given an opportunity to be heard in opposition to the proposed cancellation.

History: En. Sec. 7, Ch. 196, L. 1965; amd. Sec. 2, Ch. 216, L. 1967.

Amendments

The 1967 amendment, in the first paragraph, inserted "license" before "will continue"; and deleted the last sentence in that paragraph, which read, "There will be no license fee charge for a racing meet except as now provided in 84-6502."

62-508. Penalty for violations of law—power of commission. Any person holding a race meet, and any owner, trainer, or jockey participating in a race meet, without first being licensed by the commission, and any person willfully violating any of the terms or provisions of this act is guilty of a misdemeanor.

The commission shall have the power to exclude from any and all race courses in this state any person whom the commission deems detrimental to the best interest of racing, or any person who willfully violates any of the provisions of this act or any rule, regulation, or order of the commission.

It shall be lawful to conduct race meets on or at a race track or otherwise, at any time during the week.

History: En. Sec. 8, Ch. 196, L. 1965.

62-509. Race exclusively for Montana bred horses—bonus for winner. For the purpose of encouraging the breeding, within the state, of valuable thoroughbred, purebred, quarter horse, appaloosa and/or registered horses, at least one (1) race each day at each race meet shall be limited to Montana bred horses. If in the opinion of the commission sufficient competition cannot be had among such class of horses, said race may be eliminated for said day and a substitute race provided instead.

A sum equal to ten per cent (10%) of the first money of every purse won by a Montana bred horse shall be paid by the licensee conducting the race meet to the breeder of such horse.

History: En. Sec. 9, Ch. 196, L. 1965.

62-510. Public liability insurance. For the protection of the public, and all members thereof, the exhibitors and visitors, every person licensed to conduct a race meet under the provisions of this act shall carry public liability insurance in an amount and form of contract to be approved by the commission.

History: En. Sec. 10, Ch. 196, L. 1965; amd. Sec. 3, Ch. 216, L. 1967.

Amendments

The 1967 amendment substituted "to be approved by the commission" for "and with a company authorized to do business in Montana" at the end of the section.

62-511. Parimutuel betting—other betting illegal. It shall be unlawful to make or report or record or register any bet or wager upon the result of any contest of speed or skill or endurance of any animal, whether such contest is held within or without the state of Montana, except as herein provided.

Any licensee conducting a race meet under this act may provide a place or places in the race meet grounds or enclosure at which such licensee may conduct or supervise the use of the parimutuel system by patrons on the result of the races conducted by such licensee at such race meet, and such parimutuel system conducted at such race meet shall not under any circumstances, if conducted under the provisions of this act and in conformity thereto and to the rules and regulations of the commission, to be held or construed to be unlawful, other statutes of this state to the contrary notwithstanding.

It shall be unlawful to conduct pool selling, book making, or to circulate handbooks, or to bet or wager on a race of any licensed race meet, other than by the parimutuel system, and in the race meet grounds or enclosure where the race is held, and it shall further be unlawful to permit any minor to use the parimutuel system.

History: En. Sec. 11, Ch. 196, L. 1965; amd. Sec. 4, Ch. 216, L. 1967.

Amendments

The 1967 amendment inserted the first paragraph.

62-512. Distributions of deposits—breakage. Each licensee conducting the parimutuel system shall distribute all sums deposited in any pool to the winner thereof, less an amount which shall not exceed twenty per cent (20%) of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of ten (10), known as "breakage."

History: En. Sec. 12, Ch. 196, L. 1965.

62-513. Licensee's right to withhold deposits. In the event any government or governmental agency imposes a levy on a licensee, by a special tax on the money so deposited under the parimutuel system, or upon or against his receipts therefrom, the said licensee may withhold in addition to the aforesaid per centum and breakage the amount of the tax so levied.

History: En. Sec. 13, Ch. 196, L. 1965.

62-514. Gross receipts—commission's percentage—collection and allocation. The licensee shall pay to the commission one per cent (1%) of all gross receipts of each day's parimutuel betting at each race meet, which sums shall be paid to the commission within five (5) days after receipt by the licensee. At the end of each race meeting it shall be the duty of the licensee to prepare a report to the commission showing the amount of the overpayments and underpayments. Should the report show the underpayments to be in excess of the overpayments such balance shall be paid to the commission. All moneys paid to or received by the commission may be expended in payment of the expenses incurred in carrying out the provisions of this act. No expenditure shall be made until the commission has audited and approved the claim.

History: En. Sec. 14, Ch. 196, L. 1965; amd. Sec. 5, Ch. 216, L. 1967.

Amendments

The 1967 amendment completely rewrote this section. Prior to amendment it read, "License tax receipts on racing associations shall be collected and disposed of as provided by section 84-6502, R. C. M. 1947."

Repealing Clauses

Section 15 of Ch. 196, Laws 1965 read "Repealing section 94-2425, R. C. M. 1947, and section 84-6501, R. C. M. 1947, enacted as section 1, chapter 57, Laws of 1961, and all acts and parts of acts in conflict herewith."

Section 6 of Ch. 216, Laws 1967 read "Sections 84-6502, 84-6503 and 84-6504, R. C. M. 1947, and all acts and parts of acts in conflict herewith are hereby repealed."

Separability Clause

Section 16 of Ch. 196, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Dates

Section 17 of Ch. 196, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 5, 1965.

Section 7 of Ch. 216, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 1, 1967.

TITLE 63—PARTNERSHIP

CHAPTER 1—PARTNERSHIP IN GENERAL—PRELIMINARY PROVISIONS—NATURE OF PARTNERSHIP

63-101. Name of act.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Partnership Act: District of Columbia and Virgin Islands.

CHAPTER 6—PARTNERSHIP—USE OF FICTITIOUS NAME

63-601. (8019) Fictitious name.

Application of Law

The filing of the certificate under this section is not a prerequisite to a valid partnership or engaging in business as a partnership. First Security Bank v. United States, 213 F Supp 362, 367.

63-602. (8020) Certificate—when to be filed.

Application of Law

The disability imposed by this section is limited to maintaining an action on an account or contract. First Security Bank v. United States, 213 F Supp 362, 367.

CHAPTER 7—SPECIAL PARTNERSHIP—FORMATION

63-701. Limited partnership defined.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Limited Partnership Act: District of Columbia, Mississippi, and also Virgin Islands.

TITLE 64—PERSONS AND PERSONAL RIGHTS

Chapter 1. Persons, minors, adults and those of unsound mind, 64-106.1.
3. Freedom from discrimination, 64-301 to 64-303.

CHAPTER 1—PERSONS, MINORS, ADULTS AND THOSE OF UNSOUND MIND

Section 64-106.1. Capacity of minors to borrow money for education.

64-106.1. Capacity of minors to borrow money for education. Any person who, being a minor, contracts to borrow money to defray the expenses of attending any college or university or other institution of higher education beyond high school, shall have full legal capacity to act in his own behalf and shall have all the rights, powers and privileges and be subject to the obligations of persons of full age with respect to any such contracts.

History: En. Sec. 1, Ch. 34, L. 1963.

Title of Act

An act to establish legal capacity and obligation of minors in contracting to borrow money to finance education beyond high school.

CHAPTER 2—PERSONAL RIGHTS—LIBEL AND SLANDER—PROTECTION OF PERSONAL RELATIONS

64-203. (5690) **Libel defined.**

Libel per Se

Where complaint alleges no special damages, the action is brought on the theory of libel per se and not per quod. Steffes v. Crawford, 143 M 43, 386 P 2d 842.

64-208. (5692) **What communications are privileged.**

References

Bollinger v. Jarrett, 146 M 355, 406 P 2d 834.

CHAPTER 3—FREEDOM FROM DISCRIMINATION

Section 64-301. Freedom from discrimination as civil right—employment—public accommodations.
64-302. Definition of terms.
64-303. Discrimination as misdemeanor.

64-301. Freedom from discrimination as civil right—employment—public accommodations. The right to be free from discrimination because of race, creed, color or national origin is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(1) The right to obtain and hold employment without discrimination.

(2) The right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage or amusement.

History: En. Sec. 1, Ch. 201, L. 1965.

Title of Act

An act to provide for civil rights; defining terms; and providing for a penalty for violations.

64-302. Definition of terms. Terms used in this act shall have the following definitions:

(a) "Every person" shall be construed to include any owner, lessee, proprietor, manager, agent or employee whether one or more natural persons, partnerships, associations, organizations, corporations, co-operatives, legal representatives, trustees, receivers, of this state and its political subdivisions, boards and commissions, engaged in or exercising control over the operation of any place of public resort, accommodation, assemblage or amusement.

(b) "Deny" is hereby defined to include any act which directly or indirectly, or by subterfuge, by a person or his agent or employee, results or is intended or calculated to result in whole or in part in any discrimination, distinction, restriction or unequal treatment or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying or lodging in any place of public resort, accommodation, assemblage or amusement exept for conditions and limitations established by law and applicable alike to all persons, regardless of race, creed or color.

(c) "Full enjoyment of" shall be construed to include the right to purchase any service, commodity or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular race, creed or color, to be treated as not welcome, accepted, desired or solicited.

(d) "National origin" includes "ancestry."

(e) "Any place of public resort, accommodation, assemblage or amusement" is hereby defined to include, but not to be limited to, any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods and merchandise, or for the rendering of personal service, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates or assembles for amuse-

ment, recreation of public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of special instruction, or nursery schools, or day care centers or children's camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or place of accommodation, which is by its nature distinctly private provided that where public use is permitted that use shall be covered by this section; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution; and the right of a natural parent in loco parentis to direct the education and upbringing of a child under his control is hereby affirmed.

History: En. Sec. 2, Ch. 201, L. 1965.

64-303. Discrimination as misdemeanor. Every person who denies to any other person because of race, creed, color or national origin the right to employment; (a) by refusing to hire, (b) by discharging, (c) by barring from employment, or (d) by discriminating against such person in compensation or in other terms or conditions of employment; and every person who denies to any other person because of race, creed, color or national origin the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, shall be guilty of a misdemeanor.

History: En. Sec. 3, Ch. 201, L. 1965.

TITLE 65—PLEDGES AND TRUST RECEIPTS

Chapter 2. Uniform Trust Receipts Act, Repealed—Section 10-102, Chapter 264, Laws of 1963.

CHAPTER 1—PLEDGE

65-104. (8295) Repealed.

Repeal

This section (Sec. 3893, Civ. C. 1895), relating to increase of property pledged, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

65-107. (8298) Repealed.

Repeal

This section (Sec. 3896, Civ. C. 1895), relating to the pledge of loaned property, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

65-115 to 65-126. (8306 to 8317) Repealed.

Repeal

These sections (Secs. 3904 to 3915, Civ. C. 1895; Secs. 5788 to 5799, Rev. C. 1907; Sec. 1, Ch. 102, L. 1941), relating to the rights and duties of pledgees, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 2—UNIFORM TRUST RECEIPTS ACT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

65-201 to 65-219. Repealed.

Repeal

These sections (Secs. 1 to 19, Ch. 147, L. 1945; Sec. 13, Ch. 117, L. 1961), the Uniform Trust Receipts Act, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

TITLE 66—PROFESSIONS AND OCCUPATIONS

Chapter 1. Architecture—regulation of practice, 66-108 to 66-110, 66-112, 66-114, 66-115.
2. Auctioneers and auction sales, 66-202, 66-203.1, 66-204.
4. Barbers and barber shops, 66-407, 66-408.
5. Chiropractic—regulation of practice, 66-506, 66-512 to 66-514.
6. Chiropody—regulation of practice, 66-603, 66-607, 66-608.
8. Cosmetology (beauty shops) regulation, 66-809, 66-815, 66-816.
9. Dentistry—regulation of practice, 66-904, 66-906, 66-909, 66-919, 66-925.
10. Medicine—regulation of practice, 66-1008, 66-1009.
12. Nursing—regulation of practice, 66-1221, 66-1222, 66-1228, 66-1231 to 66-1234, 66-1236, 66-1237, 66-1242, 66-1243.
13. Optometry—regulation, 66-1302, 66-1307, 66-1311, 66-1314, 66-1315.
14. Osteopathy—regulation of practice, 66-1403, 66-1405, 66-1410.
15. Pharmacy—regulation of sale of drugs and medicines, 66-1505, 66-1508, 66-1527.
18. Public accountants—regulation, 66-1812.
19. Real Estate License Act, 66-1924 to 66-1946.
21. Title abstracters—regulation, 66-2104, 66-2106.
22. Veterinary medicine—regulation of practice, 66-2203, 66-2204, 66-2209 to 66-2209.2.
23. Engineers and land surveyors, 66-2333.
24. Plumbers, 66-2402, 66-2403, 66-2405, 66-2407, 66-2427.
25. Physical Therapists Practice Act, 66-2503.
26. Water Well Contractor's License Act, 66-2604 to 66-2606, 66-2615.
27. Morticians and funeral directors, 66-2701 to 66-2717.
28. Electrical safety law, 66-2801 to 66-2820.
29. Masseurs—regulation and licensing, 66-2901 to 66-2914.

CHAPTER 1—ARCHITECTURE—REGULATION OF PRACTICE

Section 66-108. Fees payable by applicants for examination—disposition of fees.
66-109. Compensation of members of board—disposition and use of funds—annual report.
66-110. Annual fee of licensed architects.
66-112. Revocation of license.
66-114. Plans for public buildings to have seal and signature of architect—insurance coverage.
66-115. Time schedule for payments to architects.

66-104. (3232) Repealed.

Repeal

This section (Sec. 4, Ch. 158, L. 1917), relating to the recording of architects' certificates, was repealed by Sec. 5, Ch. 138, Laws 1967.

66-108. (3236) Fees payable by applicants for examination—disposition of fees. Applicants for examination shall pay in advance to the secretary of said board a fee of twenty-five dollars ($25), which fee shall defray the entire expense of such candidate, before the aforesaid board of architectural examiners. Any applicant failing to pass the said examination shall be entitled to a second examination within one (1) year upon payment of five dollars ($5) for each section of said examination.

The money received from said applicant shall be turned over to the state treasurer of the state of Montana, and shall be deposited by him in the earmarked revenue fund for the use of the board of architectural examiners.

History: En. Sec. 8, Ch. 158, L. 1917; re-en. Sec. 3236, R. C. M. 1921; amd. Sec. 140, Ch. 147, L. 1963; amd. Sec. 1, Ch. 138, L. 1967.

Amendments

The 1963 amendment deleted the words "which fee shall defray the entire expense of such candidate, before the aforesaid board of architectural examiners" from the end of the first sentence of the first paragraph; and substituted "earmarked revenue fund for the use of the board of architectural examiners" for "architectural board fund as herein provided" at the end of the section.

The 1967 amendment rewrote the first paragraph. Prior to amendment, it read, "Applicants for examination shall pay in advance to the secretary of said board a fee of fifteen dollars. Any applicant failing to pass the said examination shall be entitled to a second examination within one year without fee."

66-109. (3237) **Compensation of members of board—disposition and use of funds—annual report.** Each member of the examining board is hereby allowed the sum of twenty dollars ($20) per day and mileage at the rate of ten cents (10¢) per mile while in the discharge of his actual duties.

And all fees and moneys received for licenses from practicing architects shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the board of architectural examiners.

The members of the said board shall report annually to the governor on the first Monday of January of each year, which report must show all the transactions of the board, giving the number and names of all applicants, and the number and names of those rejected, and those to whom certificates have been issued, the expenses, the fees and mileage paid, and the amount of money received.

History: En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R. C. M. 1921; amd. Sec. 141, Ch. 147, L. 1963; amd. Sec. 2, Ch. 138, L. 1967.

Amendments

The 1963 amendment made numerous changes in this section. For section prior to amendment, see parent volume.

The 1967 amendment increased per diem payments to members of the examining board from $5 to $20 per day.

66-110. (3328) **Annual fee of licensed architects.** Every licensed architect in the state who desires to continue the practice of his profession shall annually, during the time he or she shall continue in such practice, pay to the treasurer of the state of Montana, during the month of July, a fee of twenty dollars ($20).

History: En. Sec. 10, Ch. 158, L. 1917; re-en. Sec. 3238, R. C. M. 1921; amd. Sec. 3, Ch. 138, L. 1967.

Amendments

The 1967 amendment increased the annual fee for architects from $10 to $20.

66-112. (3240) **Revocation of license.** The board of architectural examiners may revoke any certificate in the manner hereinafter provided if proof satisfactory to the board be presented in the following cases: (a) In case it is shown that the certificate was obtained through fraud or misrepresentation; (b) In case the holder of the certificate has been found guilty by said board or by a court of justice of any fraud or deceit in his professional practice or has been convicted of a felony by a court of justice; (c) In case the holder of the certificate has been found guilty by said board of gross incompetency or of recklessness in the planning or construction of buildings; (d) In case the holder of the certificate has been found guilty by said board of any of the following acts which

are hereby declared to constitute unprofessional conduct; (1) Willful departure in any material respect from approved plans or specifications without the consent of the owner or his duly authorized representative, (2) Willful violation of the building codes of the state or any political subdivision thereof, (3) Aiding or abetting any unlicensed person to violate or evade the provisions of this act, (4) Sealing or signing plans or specifications not prepared under his direct supervision and control.

The proceedings for revocation of a certificate shall be commenced by filing written charges against the accused with the board of architectural examiners either by the board itself or by any complainant. A copy of the charges together with a notice of the time and place of hearing shall be served on the accused at least thirty (30) calendar days in advance of such hearing. Where personal service cannot be made within the state of Montana, service may be made by publication in accordance with such rules as the board may adopt, following generally and in principle the provisions of sections 93-3013, 93-3014, and 93-3015. At the hearing, the accused shall have the right to be represented by counsel, introduce evidence, and examine and cross-examine witnesses. The secretary of the board is hereby empowered to administer oaths. The board shall make a written report of its findings and conclusions, which report, with a transcript of the entire record of the proceedings, shall be filed in the office of the secretary of state, and, if the board's findings and conclusions shall be adverse to the accused, his or her certificate shall stand revoked and annulled at the expiration of thirty (30) days from the filing of such report, unless within said period of thirty (30) days a writ of review shall be issued as hereinafter provided, in which event said certificate shall not stand suspended until the final determination of the courts upon such writ of review.

Any party aggrieved by the decision of the said board may seek a review thereof in the district court of the first judicial district of the state of Montana in the manner set forth in sections 93-9001 to 93-9011, and said court shall affirm, reverse, or modify the findings of said board in accordance with law.

The said board shall have power to require the attendance of persons and the production of books and papers and to require such persons to testify in any and all matters within its jurisdiction. The chairman and the secretary of the board shall have power to issue subpoenas, and upon the failure of any person to attend as a witness when duly subpoenaed or to produce the documents when duly directed by said board, the board shall have power to refer the said matter to the district court of the first judicial district of the state of Montana, which may order the attendance of such witness or the production of such books and papers or require the said witness to testify, as the case may be; and upon the failure of the witness to attend, to testify, or to produce such books or papers, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpoena issued or to testify in a case pending before said court.

History: En. Sec. 12, Ch. 158, L. 1917; 3, Ch. 149, L. 1957; amd. Sec. 4, Ch. 138, re-en. Sec. 3240, R. C. M. 1921; amd. Sec. L. 1967.

Amendments

The 1967 amendment added subdivision (d) in the first paragraph, and inserted "(30)" after "thirty" wherever found in the second paragraph.

Separability Clause

Section 6 of Ch. 138, Laws 1967 read "If any section, subdivision, sentence or word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, such determination shall not affect the remaining portions of this act."

Repealing Clauses

Section 5 of Ch. 138, Laws 1967 read "That section 66-104, R. C. M. 1947, is hereby repealed."

Section 7 of Ch. 138, Laws 1967 repealed all acts and parts of acts in conflict therewith.

66-114. Plans for public buildings to have seal and signature of architect—insurance coverage. All architectural plans and specifications for public buildings of the state of Montana, or any agency thereof, or of any county, city, or school district of the state, shall bear the seal and signature of the architect responsible therefor.

All architects shall have an adequate errors and omissions insurance policy when performing any supervisory acts relating to the construction of any public buildings, works or improvements of the state of Montana or any agency thereof, or of any county, city or school district of the state and such insurance shall be in force for three (3) years after the completion of the public buildings, works, or improvements.

History: En. Sec. 2, Ch. 190, L. 1953; amd. Sec. 1, Ch. 68, L. 1957; amd. Sec. 1, Ch. 167, L. 1961; amd. Sec. 1, Ch. 220, L. 1965; amd. Sec. 1, Ch. 131, L. 1967.

Amendments

The 1965 amendment added the final paragraph.

The 1967 amendment deleted the first part of this section, which read, "No payment for professional services of any architect or architects, relating to the planning or construction of public buildings of the state of Montana, or any agency thereof, or of any county, city, or school district in the state, shall hereafter be made at any greater rate of compensation for such professional services than hereinafter set forth; and no contract for professional services of any architect or architects, relating to the planning or construction of any such public buildings, works or improvements, shall hereafter be entered into by any board, department or agency of the state of Montana, or of any county, city or school district in the state which shall provide for payment of any greater rate of compensation for such professional services than the following percentages of actual cost of construction of such buildings, works or improvements, to wit:

"'A' Rate—Specialized Types: Structures of individual design and detail requiring special skill and prolonged study such as banks, clinics, club buildings, hospitals, libraries, memorials, monuments, museums, and residences:

	Fee	Construction Cost
	8.00% of first	$ 50,000
Plus	7.75% of next	50,000
Plus	7.50% of next	100,000
Plus	7.00% of next	300,000
Plus	6.00% of next	500,000
Plus	5.00% of all additional	

"'B' Rate—Conventional Types: Structures of conventional character such as apartments, administrative buildings, bus and railway depots, churches, gymnasiums, dormitories, fire stations, nurses' homes, office buildings, restaurants, schools, shopping centers, stores and shops and theaters:

	Fee	Construction Cost
	7.50% of first	$ 50,000
Plus	7.25% of next	50,000
Plus	7.00% of next	100,000
Plus	6.50% of next	300,000
Plus	5.50% of next	500,000
Plus	4.50% of all additional	

"'C' Rate — Utilitarian Types: Structures of simplest utilitarian character such as airport hangars, armories, field houses, garages, shop maintenance buildings, multiple housing projects, stadiums, warehouses:

	Fee	Construction Cost
	6.50% of first	$ 50,000
Plus	6.25% of next	50,000
Plus	6.00% of next	100,000
Plus	5.50% of next	300,000
Plus	4.50% of next	500,000
Plus	3.50% of all additional."	

66-115. Time schedule for payments to architects. All compensation payable to architects for planning or construction of public buildings of the state of Montana, or any agency thereof, or of any county, city or school district in the state may be distributed and paid in accordance with the following schedule, to wit:

20% upon completion of studies and preliminary drawings

55% upon completion of working drawings and specifications

15% during construction, based on contract payment

10% when construction has been completed and accepted by the owner or the duly authorized agent of such owner.

History: En. Sec. 3, Ch. 190, L. 1953; amd. Sec. 2, Ch. 167, L. 1961; amd. Sec. 1, Ch. 209, L. 1965; amd. Sec. 2, Ch. 131, L. 1967.

Amendments

The 1965 amendment changed the schedule by reducing the amount payable during construction from 25% to 15% and by adding the provision for payment of 10% on completion and acceptance of construction.

The 1967 amendment deleted the first paragraph of this section, which read, "Said rate of compensation shall constitute full payment for all services and functions whatsoever of the contracting architect or architects and his and their employees and subcontractors including, but not limited to, consultation, preliminary studies, sketches, and estimates of costs, preparation of working drawings and working plans and specifications, preparation of advertisement of bids, bid forms, certificates of estimates, and inspection and supervision of construction; provided, however, that if the architect is caused extra drafting or other expense due to changes ordered by the owner, or due to the delinquency or insolvency of the owner or contractor, or as a result of damage by fire, he shall be equitably paid for such expense and the services involved"; deleted the first sentence in the second paragraph, which read, "Three per cent (3%) of the cost of construction shall be added to the maximum rate of compensation, as above set forth for alterations to existing buildings"; substituted "to architects for planning or construction of public buildings of the state of Montana, or any agency thereof, or of any county, city or school district in the state" for "under this act" after "All compensation payable"; and deleted a proviso at the end of the section which read: "provided, the architect shall be paid at said times at the applicable rate of compensation for any work which is requested by the owner or its duly authorized agent and within the scope of his authority to the extent authorized but abandoned by such owner in whole or in part."

Repealing Clause

Section 3 of Ch. 131, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 2—AUCTIONEERS AND AUCTION SALES

Section 66-202. Auctioneer's authority from the bidder.
66-203.1. Reciprocal privileges to nonresident auctioneers.
66-204. The bond—sureties, approval and filing.

66-202. (7977) Auctioneer's authority from the bidder. An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract, as prescribed in section 66-219. [Effective January 1, 1965.]

History: En. Sec. 3161, Civ. C. 1895; re-en. Sec. 5462, Rev. C. 1907; re-en. Sec. 7977, R. C. M. 1921; amd. Sec. 11-145, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2363. Field Civ. C. Sec. 1265.

Amendment

The 1963 amendment substituted the reference to section 66-219 at the end of the section for "the chapters on sale."

66-203.1. Reciprocal privileges to nonresident auctioneers. The citizenship requirements required by the state of Montana for an auctioneer are hereby waived for the citizens of any state or states to the same extent

that the home state of the applicant waives such citizenship requirements for the citizens of the state of Montana.

History: En. Sec. 1, Ch. 173, L. 1963.

Title of Act

An act to provide for reciprocal agreements with other states waiving citizenship requirements for auctioneers and providing for the place of posting bond by nonresident auctioneers.

66-204. (4148) **The bond—sureties, approval and filing.** The bond must be conditioned to be paid to the state of Montana, with one or more sureties, in the sum of five thousand dollars, and approved by the county clerk of the county in which the auctioneer resides, and filed in his office; or if the auctioneer is not a resident of Montana, said bond shall be filed with the county clerk of the county of this state in which he carries on his principal auction business.

History: En. Sec. 3401, Pol. C. 1895; re-en. Sec. 2120, Rev. C. 1907; re-en. Sec. 4148, R. C. M. 1921; amd. Sec. 2, Ch. 173, L. 1963. Cal. Pol. C. Sec. 3285.

Amendment

The 1963 amendment added the clause following the semicolon and pertaining to nonresident auctioneers.

Repealing Clause

Section 3 of Ch. 173, Laws 1963 repealed all acts and parts of acts in conflict therewith.

CHAPTER 4—BARBERS AND BARBER SHOPS

Section 66-407. Officers, official seal.
66-408. Compensation, funds and reports.

66-407. **Officers, official seal.** The board shall elect a president, secretary and treasurer. It shall adopt and use a common seal for the authentication of its orders and records. The secretary shall keep a record of all proceedings of the board. At least once a month all moneys collected by the board shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the board of barber examiners.

History: En. Sec. 7, Ch. 127, L. 1929; amd. Sec. 138, Ch. 147, L. 1963; amd. Sec. 23, Ch. 177, L. 1965.

Amendments

The 1963 amendment substituted the third sentence for a clause appearing at the end of the second sentence and reading, "and shall at least once a month turn over to the treasurer of the board all moneys collected."

The 1965 amendment deleted a final sentence reading, "The secretary and treasurer shall each furnish a surety bond in the sum of five thousand dollars ($5,000.00), for the faithful performance of his duties; said bond to be filed with the secretary of state and shall be approved by the governor."

66-408. (3228.26) **Compensation, funds and reports.** Each member of the board shall receive a compensation of fifteen dollars ($15.00) per day while attending board meetings together with legitimate and necessary expenses incurred in attending the meeting of said board.

The board shall make an annual report of its proceedings and moneys expended by it to the governor of the state for the year ending on the 31st day of December preceding the making of said report.

History: En. Sec. 8, Ch. 127, L. 1929; amd. Sec. 2, Ch. 237, L. 1957; amd. Sec. 139, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted a former second paragraph which read: "The board

of barber examiners shall be self-sustaining financially and no funds of the state shall be paid for the operation and maintenance of said board. The disbursements of said board shall be paid upon the warrant of the president and secretary."

CHAPTER 5—CHIROPRACTIC—REGULATION OF PRACTICE

Section 66-506. Examinations—subjects embraced in.
66-512. Renewal of license.
66-513. Disposition of fees—receipts and disbursements—per diem and mileage.
66-514. Dismissal of members of board.

66-506. (3143) **Examinations — subjects embraced in.** Examinations for license to practice chiropractic shall be made by said board according to the method deemed by it to be the most practicable and expeditious to test the applicant's qualifications. Such application shall be designated by a number instead of the applicant's name, so that the identity will not be discovered or disclosed to the members of the board until after the examination papers are graded.

All examinations shall be made in writing, the subjects of which shall be as follows: Anatomy, physiology, symptomatology, diagnosis, chiropractic orthopedy, principles of chiropractic and adjusting, sanitation and hygiene, urinalysis, gynecology, and palpation. Additional subjects may be prescribed from time to time by the board to meet new conditions. A license shall be granted to all applicants who shall correctly answer seventy-five per centum of all questions asked, and if any applicant shall fail to answer correctly sixty per centum of the questions on any branch of said examination, he or she shall not be entitled to a license.

The board may accept the grades an applicant has received in the written examinations given by the national board of chiropractic examiners and may grant a license without further written examination to an applicant who holds a valid certificate from the national board of chiropractic examiners, provided such applicant meets the other requirements of this chapter and satisfactorily passes a practical examination before the board.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3143, R. C. M. 1921; amd. Sec. 1, Ch. 36, L. 1967.

Amendments

The 1967 amendment added the third paragraph of this section.

Repealing Clause

Section 3 of Ch. 36, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 36, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 14, 1967.

66-512. (3149) **Renewal of license.** One of the purposes of this act is to require each licensee to keep abreast of and informed about the developments and advances in the science of chiropractic, and, therefore, each license shall expire on the first day of September in each year, and shall be renewed then or thereafter, by the board, upon payment of a renewal fee of not less than five dollars ($5.00) nor more than twenty-five dollars ($25.00) as set by the state board of chiropractic examiners,

and the presentation of evidence satisfactory to said board that the licensee, in the year preceding the application for renewal, attended an educational program for chiropractors conducted by any school of chiropractic licensed to operate in the state of its location, or an educational program conducted by the state association of licensed chiropractors of any state, or an educational program approved by the state board of chiropractic examiners; provided, that the board may grant renewals, but not consecutive renewals, upon a showing satisfactory to said board that attendance upon said educational programs was unavoidably prevented, provided that new licensees during the six (6) months preceding said September first, by examination, shall be granted renewal licenses without attending said educational programs, provided, that a failure to renew a license shall not prevent a licensee from subsequently applying for and receiving a license, as if there were no lapse of time between the expiration of the old license, and the granting of a renewal license; provided, that nothing herein shall prevent a renewal of said license if in said preceding year for any reason, at least one of the said educational programs is not conducted in the state of Montana.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R. C. M. 1921; amd. Sec. 2, Ch. 129, L. 1933; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965.

Amendment

The 1965 amendment increased the maximum renewal fee from $15 to $25 and substituted "an educational program for chiropractors conducted by any school of chiropractic licensed to operate in the state of its location, or an educational program conducted by the state association of licensed chiropractors of any state, or an educational program approved by the state board of chiropractic examiners" immediately before the first proviso for "at least one of the two-day educational programs as conducted by the Montana chiropractic association."

66-513. (3150) **Disposition of fees—receipts and disbursements—per diem and mileage.** All examinations and renewal fees received by the state board of chiropractic examiners under this act shall be paid to the secretary-treasurer of said board, who shall at the end of each month deposit the same with the state treasurer, and the said state treasurer shall place said money so received in the earmarked revenue fund for the use of the state board of chiropractic examiners.

The secretary-treasurer shall keep a true and accurate account of all funds received and all vouchers issued by the board; and on the first day of December of each year he shall file with the governor of the state a report of all receipts and disbursements and the proceedings of said board for the fiscal year.

The members of said board shall receive a per diem of twenty-five dollars ($25.00) for each day during which they shall be actually engaged in the discharge of their duties, and mileage at the rate of ten cents (10¢) per mile for each mile necessarily traveled in going to and from any meeting of said board.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R. C. M. 1921; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund for the use of the state board of chiropractic examiners" for "a special fund of the state board of

chiropractic examiners and shall pay the same out in warrants drawn by the auditor of the state thereof, upon vouchers issued and signed by the president and the secretary-treasurer of said board" at the end of the first sentence of the first paragraph; deleted from the first paragraph a second sentence which read: "Said money so received and placed in said fund may be used by the state board of chiropractic examiners in defraying their expenses in carrying out the provisions of this act"; and deleted a former fourth paragraph which read: "Such per diem and mileage and such other incidental expenses necessarily connected with said board shall be paid out of the fund of the state board of chiropractic examiners, and not otherwise."

66-514. (3151) **Dismissal of members of board.** Upon sufficient proof to the governor of the inability or misconduct of a member of the board, said member shall be dismissed, and the governor shall appoint as his successor some licensed chiropractor practicing in this state, who shall be a graduate of a different school than those represented on the board.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3151, R. C. M. 1921; amd. Sec. 24, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted a first sentence reading, "The treasurer of said board shall give bond in such sum and with such sureties as the board may deem proper."

CHAPTER 6—CHIROPODY—REGULATION OF PRACTICE

Section 66-603. Chiropody examiners—examinations—qualifications—schools—fees—nonresident practitioners.
66-607. Disposal of moneys collected.
66-608. Compensation of examiners—expenses.

66-603. (3154.3) **Chiropody examiners—examinations—qualifications—schools—fees—nonresident practitioners.** (1). * * * [Same as parent volume.]

(2) Examinations shall be held semiannually at such places and time as the state board of chiropody medical examiners shall direct. On and after the date of the taking effect of this act, all persons who may wish to begin practice of chiropody in this state, shall make application upon a blank form authorized and furnished by said state board of medical examiners, for a license to practice chiropody. This application shall be granted to such applicants, after they shall have furnished satisfactory proof of being at least twenty-one (21) years of age, of good moral character, of having attained high school graduation or its equivalent and of having had at least two years of instruction in an accredited school of chiropody recognized as being in good standing by the Montana board of chiropody medical examiners, but after June 1st, 1941, no school of chiropody shall be accredited by said board which does not require for graduation four (4) years of instruction in the study of chiropody. All chiropodists, actively engaged in the practice of chiropody one (1) or more years and licensed by the state board of medical examiners, prior to April 1st, 1939, whether meeting these requirements or not, shall, upon furnishing proof thereof to said board of chiropody medical examiners be entitled to a license without examination. A license without written examination may be issued to chiropodists of other states maintaining equal statutory requirements for the practice of chiropody and extending the

same reciprocal privilege to this state provided further that they have had a valid license for at least two years in that state prior to filing for reciprocal privilege, and by payment of fifty dollars ($50.00) to the secretary of the board of medical examiners.

History: En. Sec. 3, Ch. 2, L. 1923; amd. Sec. 3, Ch. 218, L. 1939; amd. Sec. 131, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the secretary of the board of medical examiners" for "board of medical examiners fund" at the end of the section.

66-607. (3154.7) **Disposal of moneys collected.** All fees and licenses shall be paid to and collected by the secretary of the state board of medical examiners, who shall at least quarterly each year pay the same to the state treasurer, and the state treasurer shall receive and accept such moneys and credit same to the earmarked revenue fund for the use of the state board of medical examiners.

History: En. Sec. 7, Ch. 2, L. 1923; amd. Sec. 130, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund for the use of the state board of medical examiners" for "a special fund to be known and designated as board of medical examiners fund and such fund shall not be used or expended for any purpose other than as provided for in section 66-1009" at the end of the section.

66-608. (3154.8) **Compensation of examiners—expenses.** Each member of the board of examiners, except the secretary and the physician members who are otherwise paid for the performance of their duties as medical examiners, shall receive for his services the sum of five dollars ($5.00) per diem and necessary traveling and incidental expenses, while the secretary shall receive his necessary expenses for services which cannot be performed at the capitol. All printing, postage and other contingent expenses, necessarily incurred, shall be paid by the state board of medical examiners in the same manner as other expenses of the state board of medical examiners.

History: En. Sec. 8, Ch. 2, L. 1923; amd. Sec. 132, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "out of the funds created by the payment of fees by applicants for licenses" following "receive for his services" in the first sentence; substituted "capitol" for "capital" at the end of the first sentence; and substituted "by the state board of medical examiners" in the third sentence for "from said funds, and all expenses shall be itemized, verified, audited, upon presentation by the state board of medical examiners, and a warrant drawn therefor by the state auditor on the board of medical examiners fund."

CHAPTER 8—COSMETOLOGY (BEAUTY SHOPS) REGULATION

Section 66-809. Compensation of members of board—deposit of receipts in state treasury.
66-815. Fees.
66-816. Duration and renewal of licenses and certificates—delinquent renewal fee.

66-809. (3228.9) **Compensation of members of board—deposit of receipts in state treasury.** Each member of the board shall receive, as compensation for his or her services, the sum of twenty dollars ($20)

for each day's actual attendance at board meetings, not to exceed three (3) consecutive days, and each member shall be reimbursed for his or her expenses necessarily incurred in the performance of his or her duties hereunder. All receipts of the board shall be deposited in the state treasury to the credit of the earmarked revenue fund for the use of the state examining board of cosmetology. The secretary of the state board shall receive an annual salary to be fixed by the board, and his or her necessary expenses actually incurred in the performance of official duties. Such secretary shall not receive, in addition to the salary herein provided, the per diem herein provided for attendance of board meetings. The state board may make reasonable provisions, for its expenses in the enforcement of this act, and for compensation and expenses of examiners.

History: En. Sec. 9, Ch. 104, L. 1929; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967.

Amendments

The 1963 amendment substituted the second sentence for a sentence reading, "All such compensation and necessary expenses shall be paid by the board out of the funds received by it and no part shall be paid by the state"; and deleted from the end of the section a proviso reading, "provided, however, that no payments shall be made by the board except upon a verified claim filed with the board and approved by the majority thereof, and by warrants signed by the president and secretary-treasurer of the board."

The 1967 amendment increased the compensation of members of the state examining board of cosmetology from $10 to $20 per day, and inserted "(3)" after "three" in the first sentence.

66-810. (3228.10) **Repealed.**

Repeal

This section (Sec. 10, Ch. 104, L. 1929; Sec. 9, Ch. 222, L. 1939), relating to the bond of the secretary-treasurer of the state examining board of cosmetology, was repealed by Sec. 51, Ch. 177, Laws 1965.

66-815. (3228.15) **Fees.** Each applicant for examination to practice or teach shall pay, at the time of such application a fee of ten ($10.00) dollars. Each person practicing cosmetology as an operator shall pay a fee of three ($3.00) dollars for the issuance of a license, and the further fee of three ($3.00) dollars annually for each renewal thereof. Each applicant for a manager-operator license shall pay a fee of five ($5.00) dollars, for the issuance of such a license and the further sum of five ($5.00) dollars annually for each renewal thereof. A manager-operator or teacher of cosmetology who is retired or no longer active in any capacity in a cosmetological establishment or beauty school may obtain an inactive license upon the payment of an annual fee of three ($3.00) dollars. Every person, firm, copartnership or corporation originally opening a cosmetological establishment shall pay the sum of five ($5.00) dollars for the issuance of the original license. The sum of three ($3.00) dollars annually shall be paid by each existing cosmetological establishment and for each renewal of cosmetological establishment license. Each person teaching cosmetology shall pay a fee of five ($5.00) dollars, for the issuance of a license, and the further sum of five ($5.00) dollars annually for each renewal thereof. Every person, firm, copartnership, or corporation, owning, operating or conducting a school of cosmetology shall pay the sum of twenty-five ($25.00) dollars for a certificate of registration therefor, and pay a further sum of twenty-five ($25.00) dollars annually

for each renewal thereof. Each applicant for apprentice license shall pay an annual fee of three ($3.00) dollars. Each applicant for itinerant license as a cosmetologist, shall pay a fee of twenty-five ($25.00) dollars. Such license fees shall be paid annually in advance to the secretary of the board. No other or additional license or fee shall be imposed by any municipal corporation or any other political subdivision of the state of Montana for the practice or teaching of cosmetology.

History: En. Sec. 15, Ch. 104, L. 1929; amd. Sec. 12, Ch. 222, L. 1939; amd. Sec. 3, Ch. 80, L. 1941; amd. Sec. 3, Ch. 20, L. 1955; amd. Sec. 2, Ch. 140, L. 1959; amd. [Sec. 1,] Ch. 131, L. 1963.

Amendment

The 1963 amendment inserted the fourth, fifth, and sixth sentences.

66-816. (3228.16) **Duration and renewal of licenses and certificates—delinquent renewal fee.** Licenses and certificates shall be issued for no longer than one (1) year. All licenses and certificates shall expire on the 31st day of December next succeeding unless renewed for the next year. Licenses and certificates may be renewed by application made prior to the 31st day of December of each year, and the payment of a required renewal fee. Expired licenses and certificates may be renewed under special rules adopted by the board.

In addition to the foregoing requirements for renewal persons applying for the renewal of teachers' licenses must have fulfilled the following additional requirements:

(a) During every year each active teacher, either full time or part time, must have successfully completed thirty (30) hours professional teacher training at a school approved by the board as a prerequisite to the renewal of the teacher's license.

(b) Persons holding a teacher's license, but not actively engaged either full time or part time in teaching cosmetology during the preceding year, may renew such license by paying the fee therefor.

(c) Persons holding a teacher's license but not actively engaged in teaching cosmetology either full time or part time for the preceding year or longer and wishing to resume active teaching of cosmetology must successfully complete thirty (30) hours professional teachers' training at a school approved by the board before resuming active teachers' training. Provided, however, that the foregoing provisions shall not prevent the board, under regulations as it may prescribe, from permitting any person holding a teacher's license and not actively engaged either full time or part time in teaching cosmetology from teaching as a substitute for an active teacher.

A fee of two dollars and fifty cents ($2.50) shall be charged in addition to other fees fixed by law for renewal applications of licenses and certificates made after the 31st day of December of each year, said board shall notify all license holders of expiration date of license not less than thirty (30) days before such expiration date, and call attention to penalty imposed for failure to renew license by date of expiration.

History: En. Sec. 16, Ch. 104, L. 1929; amd. Sec. 13, Ch. 222, L. 1939; amd. Sec. 1, Ch. 115, L. 1961; amd. Sec. 1, Ch. 132, L. 1967.

Amendments

The 1967 amendment inserted the provisions for additional requirements for the renewal of licenses.

CHAPTER 9—DENTISTRY—REGULATION OF PRACTICE

Section 66-904. Meetings—notice—quorum—funds—duties—accounts.
66-906. Certificate to be registered in counties where practicing—replacing lost certificates—second examination on failure—admission of dentists from other states—reciprocity—annual license fee—inactive fee—due date of annual fee—revocation of license for failure to pay.
66-909. Compensation and expenses allowed board members—limitation on duration of examination meetings—employment of counsel to enforce act—secretary-treasurer's compensation.
66-919. Practicing dentistry without certificate, penalty for—disposition of fines.
66-925. Citation of act—regulatory board.

66-904. (3115.4) **Meetings — notice — quorum — funds — duties — accounts.** The board shall meet at least once in each year or oftener at any point in the state of Montana at the call of the president and the secretary-treasurer. Five days' notice must be given by the secretary-treasurer to all board members of the time and place of the meeting of said board. The regular annual meeting of the board shall be held on the second Monday in July of each year. Three members of said board shall constitute a quorum for the transaction of business and its proceedings shall be open to public inspection in all cases of public interest. All moneys received by the board and/or its officers for the board, shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of dental examiners.

The secretary-treasurer shall keep a complete record of all meetings and proceedings of which records the secretary-treasurer shall be custodian, and he shall keep a true and complete account of all moneys received and disbursements made by the board and by him as such officer. The secretary-treasurer shall, not later than the fifteenth day of January of each year, cause to be prepared, a full, true and accurate account of all moneys received, and of all expenditures made, including per diem and expenses of each board member, during the last preceding calendar year. A copy of such account shall be delivered to the governor of Montana and like copies shall be mailed to every registered dentist in the state of Montana.

History: En. Sec. 4, Ch. 48, L. 1935; amd. Sec. 147, Ch. 147, L. 1963; amd. Sec. 25, Ch. 177, L. 1965.

Amendments

The 1963 amendment substituted the words "deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of dental examiners" for "paid to the secretary-treasurer of the board, who shall be the custodian of the board's receipts and funds, and all disbursements shall be made by him in accordance with this act, and the directors of the board" at the end of the first paragraph.

The 1965 amendment deleted "shall give bond in such amount as the board may from time to time require, which bond shall be approved by the board, and he" after "The secretary-treasurer" at the beginning of the second paragraph.

66-906. (3115.6) **Certificate to be registered in counties where practicing—replacing lost certificates—second examination on failure—admission of dentists from other states—reciprocity—annual license fee—inactive fee—due date of annual fee—revocation of license for failure to pay.** (1) The certificate in this act provided for shall entitle the holder thereof to practice

dentistry in any county in the state of Montana, provided such certificate shall first be filed for registration and registered in the office of the county recorder of the county in which such holder desires to practice, and nothing herein contained shall be construed to permit any holder of any certificate to practice in any county in this state unless such certificate shall have been first registered in the office of the recorder of such county as herein provided; provided further that any such holder of a certificate may practice in more than one or in any number of counties in this state on having such certificate registered in each [of] such counties in which such holder desires to practice. Said board of dental examiners shall, upon satisfactory proof of the loss of any such certificate issued under the provisions of this act, issue a duplicate certificate in place thereof, and a fee of five dollars ($5.00) shall be charged for issuing such certificate. Any person failing to pass his first examination before such board, may demand a second examination at any subsequent meeting of said board held for the purpose of examining candidates, and no fee shall be charged for any subsequent examination.

(2). * * * [Same as parent volume.]

(3) In addition to the license fee required of applicants, every licensed dentist practicing within the state of Montana shall pay in each and every year to the secretary-treasurer of the board, the sum of seven dollars ($7.00), as a license fee for such year. In the event the payment of the annual license fee is not made prior to the first day of May by either practicing dentists or dentists not engaged in the active practice within the state of Montana, and [an] additional penalty of three dollars ($3.00) shall be charged for late payment which shall be in addition to any other fee requirements of this section.

(4). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 48, L. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted from the end of the first sentence of subsection (3) a proviso which read: "provided, however, that the board shall have the power to reduce the annual license fee of seven dollars ($7.00) to the sum of one dollar ($1.00) or more (but not in excess of seven dollars ($7.00) per year when the amount of the balance of cash in the hands of the secretary-treasurer reaches the sum of eight thousand dollars ($8,000.00), it being the intent of this act that said fund shall be maintained at an approximate level of eight thousand dollars ($8,000.00)"; deleted from subsection (3) a second sentence which read, "Notice of such change in the amount of dues shall be given to each dentist registered in the state by the secretary-treasurer"; and made minor changes in phraseology.

66-909. (3115.9) **Compensation and expenses allowed board members —limitation on duration of examination meetings—employment of counsel to enforce act—secretary-treasurer's compensation.** The sum of fifteen dollars ($15.00) per day for each day actually engaged in the duties of his office and the amount of the actual railroad and Pullman fares to and from his place of residence to the place where the meetings of said board are held, shall be paid to each member of said board attending such meetings. Meetings held for the purpose of examining candidates for license to practice dentistry in Montana shall in no case exceed six days. Said board may, if by it deemed advisable, with the consent of the county attorney of any county, employ and compensate special counsel to assist

in the prosecution in the courts of such county and in the supreme court of this state, of any offense alleged to have been committed under the provisions of this act in such county. The secretary-treasurer of the board shall receive such reasonable compensation for his services as said board may fix.

History: En. Sec. 9, Ch. 48, L. 1935; amd. Sec. 149, Ch. 147, L. 1963.

Amendment

The 1963 amendment at the beginning of the section deleted the words "Out of the funds coming into the possession of the board from the fees and dues charged as hereinabove provided"; deleted the words "out of said fund" which followed the words "employ and compensate" in the third sentence; deleted a fourth sentence which read "Such expenses shall be paid from the fees received by the board under the provisions of this act"; and deleted from the end of the section two sentences which read "All moneys received from any source in excess of expenses and salaries above provided for, shall be held by the secretary-treasurer of said board as a special fund for meeting the expenses of said board, the proper administration of this act and for such educational purposes as may be deemed wise by said board. All moneys on hand shall be invested or deposited under the direction of the board, and all moneys received by the board under this act shall be and remain subject to its exclusive custody and control."

66-919. (3115.19) **Practicing dentistry without certificate, penalty for —disposition of fines.** Any person who, as principal, agent, employer, employee or assistant, shall practice dentistry in any manner whatever, or who shall do any act of dentistry, without having first secured his or her certificate to practice dentistry from the state board of dental examiners of the state of Montana entitling him or her to so practice in this state, shall be guilty of a misdemeanor, and upon conviction in a district court shall be fined in any sum not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00) or be confined for any period not exceeding six (6) months in the county jail, for each and every offense. All fines imposed and collected under this act shall be paid into the treasury of the county in which such suits, actions or proceedings shall have been commenced. All moneys thus paid into the treasury over and above the amount necessary to reimburse the county for any expense incurred by said county, in any suit, action or proceeding brought under the provisions of this act, shall be paid, before the first day of January of each year, to the treasurer of the state of Montana, for deposit in the earmarked revenue fund for the use of the state board of dental examiners.

History: En. Sec. 19, Ch. 48, L. 1935; amd. Sec. 3, Ch. 38, L. 1941; amd. Sec. 150, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the words "treasurer of the state of Montana, for deposit in the earmarked revenue fund for the use of the state board of dental examiners" at the end of the section for "secretary-treasurer of the state board of dental examiners of the state of Montana, and become and be a part of the fund to be used by the said state board of dental examiners in the enforcement of the provisions of this act, and shall be used for no other purpose."

66-925. (3115.25) **Citation of act—regulatory board.** This act may be known and cited as the "Montana Dentistry Regulation Act."

History: En. Sec. 27, Ch. 48, L. 1935; amd. Sec. 151, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "and said state board of dental examiners of the state of Montana is hereby declared to be a regulatory board within the meaning of the proviso of section 79-306" at the end of the section.

CHAPTER 10—MEDICINE—REGULATION OF PRACTICE

Section 66-1008. Fees for examination for admittance—annual license.
66-1009. Compensation and expenses allowed board member—employment of clerks and counsel—secretary's compensation.

66-1001. (3116) Qualifications, appointment, term of medical examiners.

Cross-Reference

Exemption from liability of physicians rendering aid at scene of emergency, sec. 17-410.

66-1007. (3122) Practicing medicine without certificate—penalties.

Construction

The offenses listed in paragraph (2) of this section are in the disjunctive rather than the conjunctive. State v. Moore, 141 M 86, 375 P 2d 218, 220.

Physiotherapy

An alleged physiotherapist was guilty of violating this section where he attempted to remove moles from patient's body by the use of a surgical diathermy machine. State v. Moore, 141 M 86, 375 P 2d 218, 221.

66-1008. (3123) Fees for examination for admittance—annual license.

(1). * * * [Same as parent volume.]

(2) In addition to the respective license fees required of applicants, every licensed physician and surgeon practicing within the state of Montana shall pay each and every year to the secretary of the board, an annual registration fee not to exceed the sum of ten dollars ($10.00), as may be prescribed by the board. The moneys so received from the foregoing and every other source, shall be turned over, by said secretary, to the state treasurer, and shall be by the state treasurer deposited in the earmarked revenue fund for the use of the board of medical examiners. In the event any person licensed to practice medicine absents himself from the state for a period of one or more years, or does not engage in active practice within the state of Montana, he may continue his license in good standing by the payment of three dollars ($3.00) each year, or, at the discretion of the board, he may be reinstated upon the payment of a fee of three dollars ($3.00) for each year's absence.

(3). * * * [Same as parent volume.]

History: Ap. p. Sec. 607, Pol. C. 1895; amd. Sec. 1, Ch. 114, L. 1907; Sec. 1592, Rev. C. 1907; re-en. Sec. 3123, R. C. M. 1921; amd. Sec. 1, Ch. 68, L. 1927; amd. Sec. 4, Ch. 132, L. 1943; amd. Sec. 4, Ch. 29, L. 1961; amd. Sec. 128, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "earmarked revenue fund for the use of the board of medical examiners" for "board of medical examiners fund as provided by law" at the end of the second sentence of subsection (2).

66-1009. (3124) Compensation and expenses allowed board member—employment of clerks and counsel—secretary's compensation.

Each member of the board is hereby allowed the sum of twenty dollars ($20.00) per day and mileage while in the active and necessary discharge of his duties as a member of said board. The rate of mileage and attendance of witnesses before said board shall be the same as is now allowed in justice of the peace courts. The board must report annually on the first Monday of November to the governor, which report must show all the tranactions of the board, giving the number of applications received, and from whom received, the number of certificates granted and those rejected, giving the reasons therefor, the amount of money received, the expenses, the fees

and mileage paid, and by whom received. The board may employ such clerical help and legal counsel as may be necessary to carry out the terms and provisions of this act. The secretary of the board shall receive such reasonable compensation for his services as may be fixed by said board.

History: En. Sec. 608, Pol. C. 1895; re-en. Sec. 1593, Rev. C. 1907; re-en. Sec. 3124, R. C. M. 1921; amd. Sec. 1, Ch. 68, L. 1927; amd. Sec. 5, Ch. 132, L. 1943; amd. Sec. 5, Ch. 29, L. 1961; amd. Sec. 129, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted former second and third sentences reading, "There is hereby established a fund to be known as the board of medical examiners fund. All moneys in such fund shall only be paid out by warrant drawn on said fund after an order therefor drawn by the secretary, and countersigned by the president, of said board"; and deleted a former next to last sentence reading, "Such clerical help and counsel must be compensated only out of the said fund as fixed by the board."

CHAPTER 12—NURSING—REGULATION OF PRACTICE

Section 66-1221. Purpose.
66-1222. Citation of act—definition of board—identification of board when administering act for professional nursing and for practical nursing—definition of terms.
66-1228. License—by examination—by endorsement without examination—license fees.
66-1231. Qualifications of applicants for licensed practical nurse.
66-1232. License of practical nurse by examination—by endorsement without examination.
66-1233. Waiver of certain requirements for licensing practical nurses before July 1, 1970.
66-1234. Fee.
66-1236. Renewal of license.
66-1237. Disposition of fees.
66-1242. Exemption of persons from act—when and under what circumstances.
66-1243. Violation of act—penalties.

66-1221. Purpose. In order to safeguard life and health (a) any person practicing or offering to practice professional nursing in this state for compensation or personal gain, shall be required to submit evidence that he or she is qualified so to practice, and shall be licensed as hereinafter provided; and

In order to safeguard life and health (b) any person practicing or offering to practice practical nursing in this state for compensation or personal gain shall be required to submit evidence that he or she is qualified so to practice, and shall be licensed as hereinafter provided.

After January 1, 1954, it shall be unlawful for any person to use any title, abbreviation, sign, card, or device to indicate that such person is (a) a registered, professional nurse (b) a licensed practical nurse unless such person has been duly licensed under the provisions of this act, and the license of such person shall be valid and in force in compliance with the provisions of this act.

History: En. Sec. 1, Ch. 243, L. 1953; amd. Sec. 1, Ch. 291, L. 1967.

Amendments

The 1967 amendment substituted "for compensation or personal gain" for "as a certified or licensed practical nurse" after "in this state" in the second paragraph; deleted "certified or" before "licensed practical nurse" in the third paragraph; and made minor changes in punctuation.

66-1222. Citation of act—definition of board—identification of board when administering act for professional nursing and for practical nursing—definition of terms. This act may be cited as the Montana Nursing Practice Act.

The use of the feminine gender shall include the masculine gender and vice versa.

As used in this act the term or word "board" means the Montana state board of nursing created by this act, with dual functions (a) in the field of professional nursing and (b) in the field of practical nursing, and irrespective of the number of members of the board when functioning in either of said fields. In all matters relating to "professional nursing" the board shall consist of five (5) members to be qualified and appointed as hereinafter provided. In all matters relating to "practical nursing" the board shall consist of eight (8) members, five (5) of whom shall be identical with the five (5) member board, and the remaining three (3) members to be qualified and appointed as hereinafter provided. The board of five (5) members may for convenience be referred to as the Montana state board of nursing followed by the words "professional nursing administration," and the board of eight (8) members may, for convenience, be referred to as the Montana state board of nursing, followed by the words "practical nursing administration."

The practice of nursing embraces two classes of nursing service and activity, defined, respectively, as follows:

(1) The practice of professional nursing means the performance for compensation of any act in the observation, care and counsel of the ill, injured or infirm, or in the maintenance of health or prevention of illness of others, or in the supervision and teaching of other personnel, or the administration of medications and treatments as prescribed by a person licensed in this state to prescribe such medications and treatments; requiring substantial specialized judgment and skill and based on knowledge and application of the principles of biological, physical and social science. The foregoing shall not be deemed to include acts of diagnosis or prescription of therapeutic or corrective measures.

(2) The practice of practical nursing means the performance for compensation in the care of the ill, injured or infirm, of acts selected by and performed under the direction of an R.N., or a person licensed in this state to prescribe such medications and treatments; and not requiring the substantial specialized skill, judgment and knowledge required in professional nursing.

History: En. Sec. 2, Ch. 243, L. 1953; amd. Sec. 2, Ch. 291, L. 1967.

Amendments

The 1967 amendment substituted "of" for "or" before "members of the board" in the third paragraph; and rewrote subparagraphs (1) and (2) of the fourth paragraph. For previous text, see parent volume.

66-1228. License—by examination—by endorsement without examination—license fees. (1) By examination. The applicant for license to practice professional nursing shall be required to pass a written examination in such subjects as the board, acting under the professional nursing

administration, may determine. Each written examination may be supplemented by an oral or practical examination. Upon successfully passing such examination, the board shall issue to the applicant a license to practice nursing as a registered professional nurse. The applicant shall pay a fee of twenty-five dollars ($25) at the time the application is submitted, which fee shall be returned to the applicant, if the application is withdrawn not later than five (5) days prior to the date of examination, or, if the examination is not taken, subject to deduction by the board of one dollar ($1) per subject of the examination which shall be retained by the board.

(2) By endorsement without examination. (a) The board, acting under the professional nursing administration, may issue a license to practice nursing as a registered professional nurse without examination, to an applicant who has been duly licensed as a registered professional nurse under the laws of another state, territory or country, if in the opinion of the board the applicant meets the qualifications required of registered nurses in this state at the time the applicant graduated from a school of nursing. The applicant shall pay a fee of twenty-five dollars ($25) at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to final submission of the application to the board, subject to deduction of five dollars ($5), to be retained by the board.

(b) An applicant may, pending application for a professional nursing license pursuant to paragraph (a) immediately preceding practical professional nursing as an employee of a physician in her capacity as professional nurse or in a hospital or public health agency for a period not longer than three (3) months from the date the board acknowledges receiving from such nurse a duly completed statement, on a form provided by the board, of intention so to practice. Such statement shall consist of (1) an affidavit by such nurse and (2) an affidavit by the physician employer or by the administrator, assistant administrator, or director of nursing of a hospital or public health agency where such nurse intends to practice professional nursing. The affidavit of such nurse and the affidavit of such physician employer or administrator, assistant administrator or director of nursing of such hospital or public health agency shall contain the information deemed by the board to be necessary for such statement. This paragraph shall not be construed to permit such nurse to practice for more than said three (3) months period, or, in any event, after being notified by the board that application for a license has been denied, or, in all cases, after being notified by the board to cease and desist such practice; notice in all cases shall be given by registered or certified mail to the address of applicant as the same appears in the statement of applicant.

History: En. Sec. 8, Ch. 243, L. 1953; amd. Sec. 1, Ch. 195, L. 1963; amd. Sec. 3, Ch. 291, L. 1967.

Amendments

The 1963 amendment increased the fee for license by endorsement, as set forth in paragraph (2) (a), from $20 to $25.

The 1967 amendment in subsection (2) (b) substituted "practical" for "practice" before "nursing"; substituted "three (3)" for "six (6)" before "months from the date"; substituted "three (3)" for "six (6)" before "months period"; and inserted "or certified" before "mail to the address."

66-1231. Qualifications of applicants for licensed practical nurse. An applicant for a license to practice as a licensed practical nurse shall submit to the board acting under the practical nursing administration written evidence, verified by oath, that the applicant:

(1) Has successfully completed at least an approved four (4) year high school course of study, or the equivalent thereof as determined by the state department of public instruction;

(2) Has successfully completed the prescribed curriculum in an approved school of practical nursing and holds a diploma or certificate therefrom;

(3) Shall meet such other qualification requirements as the board, acting under the practical nursing administration, may prescribe.

History: En. Sec. 11, Ch. 243, L. 1953; amd. Sec. 4, Ch. 291, L. 1967.

Amendments

The 1967 amendment substituted subdivision (1) for "Has completed at least two (2) years of high school, or its equivalent, and such other preliminary qualification requirements as the practical nursing administration may prescribe"; and, in subdivision (2), deleted the proviso which read, "provided that any person who has completed the prescribed course in any recognized school for practical nursing within the state of Montana prior to the effective date of this act, shall be considered to have met this requirement."

66-1232. License of practical nurse by examination—by endorsement without examination. (1). * * * [Same as parent volume.]

(2) By endorsement—without examination. (a) The Montana state board of nursing—practical nursing administration, may issue a license to practice as a licensed practical nurse without examination to any applicant who has been duly licensed or registered as a licensed practical nurse or person entitled to perform like services under a different title under the laws of another state, territory or country, if in the opinion of the practical nursing administration the applicant meets the requirements for practical nurses in this state.

(b) An applicant may, pending application for a practical nursing license pursuant to paragraph (a) immediately preceding, practice practical nursing as an employee of a physician in her capacity as practical nurse or in a hospital or public health agency for a period of not longer than three (3) months from the date the board acknowledges receiving from such practical nurse a duly completed statement, on a form provided by the board, of intention so to practice. Such statement shall consist of (1) an affidavit by such practical nurse and (2) an affidavit by the physician employer or by the administrator, assistant administrator, or director of nursing of a hospital or public health agency where such practical nurse intends to practice practical nursing. The affidavit of such nurse and the affidavit of such physician employer or administrator, assistant administrator or director of nursing of such hospital or public health agency shall contain the information deemed by the board to be necessary for such statement.

This paragraph shall not be construed to permit such nurse to practice for more than said three (3) months period, or, in any event, after being notified by the board that application for a license has been denied, or, in all cases, after being notified by the board to cease and desist such

practice; notice in all cases shall be given by registered or certified mail to the address of applicant as the same appears in the statement of application.

History: En. Sec. 12, Ch. 243, L. 1953; amd. Sec. 5, Ch. 291, L. 1967.

Amendments

The 1967 amendment inserted the letter designation "(a)" before "The Montana state board" in subsection (2), and added subsection (2)(b).

66-1233. Waiver of certain requirements for licensing practical nurses before July 1, 1970. All applications for license under this waiver section of the within act must be made and delivered to the board before April 1, 1970. The board will issue licenses thereon in conformity with this section no later than July 1, 1970.

The Montana state board of nursing, practical nursing administration, may issue a license to practice as a licensed practical nurse to any person who shall submit written evidence, verified by oath, that said applicant:

(1) Is at least twenty-five (25) years of age;

(2) Is of good moral character;

(3) Is in good health;

(4) Has successfully completed at least an approved four (4) year high school course of study, or the equivalent thereof as determined by the state department of public instruction;

(5) Has lived in and has been caring for the sick as a full time employee of a recognized health care facility in the state for two (2) out of the three (3) years immediately prior to July 1, 1967. The application must be endorsed by written statements verified by oath of (a) two professional nurses licensed in Montana, or (b) a doctor of medicine licensed in Montana and the registered professional nurse director of nursing in the health care facility where employed, which endorsers must have personal knowledge of the applicant's qualifications.

The applicant shall be required to pass a written examination in such subjects as the board—practical nursing administration, may determine. Each examination may be supplemented by an oral or practical examination.

(6) The presentation of a valid license issued by the Montana state board of nursing, practical nursing administration shall be prima facie evidence that the applicant meets the qualifications of this act for licensure.

History: En. Sec. 13, Ch. 243, L. 1953; amd. Sec. 6, Ch. 291, L. 1967.

Amendments

The 1967 amendment changed the date at the end of the first sentence from July 1, 1955 to April 1, 1970; inserted the second sentence in the first paragraph; increased the age specified in clause (1) from twenty to twenty-five years; inserted clause (4); redesignated former clause (4) as (5); inserted "as a full time employee of a recognized health care facility" in clause (5); changed the date in clause (5) from July 1, 1953 to July 1, 1967; substituted "professional nurses" for "doctors of medicine" in clause (a); substituted "the registered professional nurse director of nursing in the health care facility where employed" for "a registered professional nurse director of nursing of any licensed hospital within the state of Montana" in clause (b); added paragraph (6); and made another minor change.

66-1234. Fee. The applicant applying for a license to practice as a licensed practical nurse shall pay a fee of twenty-five dollars ($25.00) to the board at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to the date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of five dollars ($5.00) to be retained by the board.

History: En. Sec. 14, Ch. 243, L. 1953; amd. Sec. 2, Ch. 195, L. 1963.

Amendment

The 1963 amendment increased the fee from $15 to $25; and made a minor change in phraseology.

66-1236. Renewal of license. The license of every person licensed under the provisions of the act, either as a registered nurse, or a licensed practical nurse, must be annually renewed, except as hereinafter provided. On or before December first of each year, the board shall mail an application form for renewal of license to every person to whom a license was issued or renewed during such year. The applicant shall carefully complete and subscribe the application form and return it to the board with a renewal fee of five dollars ($5.00) before January first, next. Upon receipt of the application and fee the board shall verify the accuracy of the application against its record, and from such other sources as it deems reliable, and issue to the applicant a certificate of renewal for the current year beginning January first and expiring December thirty-first, following. Such certificate of renewal shall render the holder thereof a legal practitioner of nursing for the period stated in the certificate of renewal.

Any licensee who allows her license to lapse by failing to renew the license as provided above may be reinstated by the board upon satisfactory explanation for such a failure to renew license and on payment of the current renewal fee prescribed by the board.

Any person practicing nursing during any time following the date her license has expired by lapse of time shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of this act.

History: En. Sec. 16, Ch. 243, L. 1953; amd. Sec. 3, Ch. 195, L. 1963.

Amendment

The 1963 amendment increased the fee specified in the third sentence of the first paragraph from $2.00 to $5.00.

66-1237. Disposition of fees. All fees received by the Montana state board of nursing, and all fines collected under this act shall be paid over by the executive secretary to the state treasurer for the credit of the earmarked revenue fund for the use of the state board of nursing.

History: En. Sec. 17, Ch. 243, L. 1953; amd. Sec. 118, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the former first three sentences of the first paragraph; substituted "the earmarked revenue fund for the use of the state board of nursing" at the end of the paragraph for "said fund, as required by law"; and deleted the former second and third paragraphs. For text of deleted provisions, see parent volume.

66-1242. Exemption of persons from act—when and under what circumstances. No provisions of this law shall be construed as prohibit-

ing gratuitous nursing by friends or members of the family, or as prohibiting the incidental care of the sick by domestic servants or persons primarily employed as housekeepers; or as prohibiting nursing assistance in the case of an emergency; nor shall it be construed as prohibiting the practice of nursing by students enrolled in approved schools of nursing or approved courses; nor by the graduates of such schools or courses pending the results of the first licensing examination scheduled by the board following such graduation; nor shall it be construed as prohibiting the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires her to accompany and care for a patient temporarily residing in this state during the period of one such engagement, not to exceed six (6) months in length, provided such person does not represent or hold herself to be a nurse licensed to practice in this state; nor shall it be construed as prohibiting the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division or agency thereof, while in the discharge of her official duties.

Nothing in this act shall be construed as prohibiting nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents thereof.

This act shall not be construed as conferring any authority to practice (a) medicine, or (b) surgery, or (c) any combination thereof, or (d) to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana, nor (e) to permit any person to undertake the treatment of disease by any of the methods employed in such arts, unless the licensee shall have qualified under the applicable law or laws licensing the practice of such profession(s) or healing art(s) in the state of Montana.

History: En. Sec. 22, Ch. 243, L. 1953; amd. Sec. 7, Ch. 291, L. 1967.

Amendments

The 1967 amendment deleted "nor shall this act prohibit the practice of practical nursing for hire or otherwise by any person, provided that such person shall not use in connection with her name any designation tending to imply that she is a licensed practical nurse unless then duly licensed so to practice under this act" at the end of the second paragraph, and made minor changes in punctuation.

66-1243. Violation of act—penalties. It shall be a misdemeanor for any person including any corporation, association or individual to:

(1) to (3). * * * [Same as parent volume.]

(4) Practice practical nursing as defined by this act unless duly licensed to do so under the provisions of this act;

(5) Use in connection with her name any designation tending to imply that she is a registered professional nurse or a licensed practical nurse unless duly licensed so to practice under provisions of this act;

(6) Practice nursing during the time her license issued under the provisions of this act shall be suspended, revoked or on inactive status;

(7) Conduct a school of nursing or a course unless the school or course has been approved by the board;

(8) Otherwise violate any provisions of this act.

Such misdemeanor shall be punishable by a fine of not less than one one hundred dollars ($100) for the first offense. Each subsequent offense shall be punishable by a fine of three hundred dollars ($300), or by imprisonment of not more than six (6) months in the county jail, or by both such fine and imprisonment.

The several district courts within their respective county jurisdictions are hereby empowered to hear, try and determine such misdemeanor and to impose in full the punishment and fines herein prescribed. It shall be necessary to prove, in any prosecution for misdemeanor under this section, only a single act prohibited by law, or a single holding out, or an attempt, without proving a general course of conduct in order to constitute a violation.

History: En. Sec. 23, Ch. 243, L. 1953; amd. Sec. 8, Ch. 291, L. 1967.

Amendments

The 1967 amendment inserted new subparagraph (4), renumbered old subparagraphs (4) through (7) as (5) through (8), and made minor changes in punctuation.

Repealing Clause

Section 9 of Ch. 291, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 13—OPTOMETRY—REGULATION

Section 66-1302. Provisions regulating practice of optometry.
66-1307. Renewal of registration—revocation—fees.
66-1311. Compensation of examiners—report.
66-1314. Penalty for violations.
66-1315. Prosecution of violations—counsel for board.

66-1302. (3156) Provisions regulating practice of optometry. It shall be unlawful for any person:

1. to 12. * * * [Same as parent volume.]

Whenever the Montana state board of examiners in optometry has reasonable cause to believe that any person is violating any provision of this section, or any lawful rule or regulation issued under this chapter, it may, in addition to all other remedies and provisions provided for in this chapter and without prejudice thereto, bring an action on the relation of the people of the state of Montana in the county in which said violation should occur to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. Said board is hereby empowered to employ legal counsel to prosecute such actions. In any such action, and upon notice and hearing, an order or judgment may be entered awarding a temporary restraining order or final injunction as may be deemed proper by the judge of the district court in which county said violation may have occurred, said district court hereby being vested with jurisdiction over such injunction action. Provided, however, that this act shall not be construed to apply to physicians and surgeons authorized to practice under the laws of the state of Montana nor to any person acting under the supervision of any such physicians or surgeons, nor to any person as excepted from the operation of this chapter by the provisions of section 66-1316, R.C.M. 1947.

History: En. Ch. 138, L. 1907; re-en. Sec. 1608, Rev. C. 1907; re-en. Sec. 3156, R. C. M. 1921; amd. Sec. 1, Ch. 171, L. 1925; amd. Sec. 1, Ch. 130, L. 1939; amd. Sec. 2, Ch. 252, L. 1959; amd. Sec. 1, Ch. 88, L. 1967.

Amendments

The 1967 amendment added the last paragraph, dealing with the power of the optometry board to enjoin violations.

66-1307. (3161) **Renewal of registration—revocation—fees.** Every registered optometrist who desires to continue the practice of optometry in this state shall annually on or before the second day of July of each year pay to the secretary of said board a renewal fee not to exceed the sum of twenty dollars ($20.00) in return for which a renewal of registration shall be issued. The board may present to registered optometrists at least one annual educational program. If any person shall fail or neglect to procure his annual renewal of registration, his certificate of registration shall be revoked by said board; provided, however, that no certificate of registration shall be revoked without ninety (90) days' notice having been given to the delinquent, who within such period shall have the right to the renewal of his certificate of registration on the payment of the renewal fee with a penalty of twenty-five dollars ($25.00).

History: En. Ch. 138, L. 1907; re-en. Sec. 1613, Rev. C. 1907; amd. Sec. 2, Ch. 128, L. 1917; re-en. Sec. 3161, R. C. M. 1921; amd. Sec. 4½, Ch. 171, L. 1925; amd. Sec. 4, Ch. 252, L. 1959; amd. Sec. 120, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "The board may present" for "The board may use not to exceed ten dollars ($10.00) from each renewal fee for the purpose of presenting" at the beginning of the second sentence.

66-1311. (3165) **Compensation of examiners—report.** Each member of the board may receive as compensation the sum of twenty-five dollars ($25.00) and necessary expenses for each day actually engaged in the duties of his office. All moneys received by the board shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of examiners in optometry. The secretary of said board shall make an annual report of its proceedings to the governor on the first Monday in January of each year, which report shall contain an account of all moneys received and disbursed by them pursuant to this act.

History: En. Ch. 138, L. 1907; re-en. Sec. 1617, Rev. C. 1907; re-en. Sec. 3165, R. C. M. 1921; amd. Sec. 5, Ch. 171, L. 1925; amd. Sec. 5, Ch. 252, L. 1959; amd. Sec. 121, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "Each member of the board" at the beginning of the section for "Out of the funds coming into the possession of said board, each member thereof"; and substituted the second sentence for a sentence and clauses reading, "Such sums shall be paid from the fees received by said board under the provisions of this act, and no part of the salary or other expenses of the board shall ever be paid out of the state treasury. All moneys received in excess of said expenses, as above provided for, shall be held by the secretary as a special fund for meeting expenses of said board, and carrying out the provisions of this act, and he shall give such bonds as the board shall from time to time direct, and."

66-1314. (3167) **Penalty for violations.** Any person who shall violate any of the provisions of this act or the rules and regulations of the state board of examiners shall be decreed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred dollars

($200.00) and not more than five hundred dollars ($500.00), or by imprisonment in the county jail not exceeding six (6) months, or by both fine and imprisonment as the court may determine. All fines thus received shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of examiners in optometry.

History: En. Ch. 138, L. 1907; re-en. Sec. 1619, Rev. C. 1907; re-en. Sec. 3167, R. C. M. 1921; amd. Sec. 8, Ch. 171, L. 1925; amd. Sec. 6, Ch. 130, L. 1939; amd. Sec. 122, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of examiners in optometry" for "paid into the treasury of the board" at the end of the section.

66-1315. (3168) **Prosecution of violations—counsel for board.** It is the duty of a county attorney of a county wherein a violation under this act is alleged to have occurred to prosecute such violation in the district court in said county. The state attorney general shall appear as counsel for the board in the state supreme court.

History: En. Ch. 138, L. 1907; re-en. Sec. 1620, Rev. C. 1907; re-en. Sec. 3168, R. C. M. 1921; amd. Sec. 1, Ch. 204, L. 1965.

Amendment

The 1965 amendment completely rewrote this section. For previous text, see parent volume.

CHAPTER 14—OSTEOPATHY—REGULATION OF PRACTICE

Section 66-1403. Regulation osteopathic licenses, educational qualifications and renewal.
66-1405. Subjects of examination—appeal.
66-1410. Compensation of board—report to governor.

66-1403. (3127) **Regulation osteopathic licenses, educational qualifications and renewal.** (1). * * * [Same as parent volume.]

(2) Each individual, after the first year of registration, holding a certificate to practice under this act and who is in active practice in this state, shall on or before the first day of April of each year pay a renewal fee of fifteen dollars ($15.00) to the secretary of the board of osteopathic examiners; and each individual, after the first year of registration, holding a certificate to practice under this act, who is not in active practice, shall on or before the first of April of each year pay a renewal fee of seven dollars and fifty cents ($7.50) to the secretary of the board. The secretary of the board shall before the 15th of March of each year send a notice to each individual holding a valid certificate to practice under this act and from whom a fee is due stating that such fee is due.

(3) The certificate to practice under this act automatically becomes void when the renewal fee is not paid at the time named. Provided that the board may reinstate a practitioner whose certificate has lapsed upon the payment of all back renewal fees or upon the payment of fifty dollars ($50.00) if the lapsed fees exceed that amount.

History: En. Ch. 51, L. 1905; re-en. Sec. 1596, Rev. C. 1907; amd. Sec. 1, Ch. 124, L. 1919; re-en. Sec. 3127, R. C. M. 1921; amd. Sec. 1, Ch. 79, L. 1925; amd. Sec. 1, Ch. 108, L. 1953; amd. Sec. 1, Ch. 206, L. 1967.

Amendments

The 1967 amendment, in subsection (2), increased the renewal fee for licenses of those osteopaths in active practice from $2 to $15 a year, and those not in active practice, from $1 to $7.50; and, in subsection (3), increased the maximum payment for renewal of licenses which have lapsed from $10 to $50.

66-1405. (3129) **Subjects of examination—appeal.** (1) and (2). * * * [Same as parent volume.]

(3) After examination the board shall grant a license to such applicants as shall pass the examination to practice osteopathy in the state of Montana, which license shall be granted by not less than two members of said board, attested by the seal thereof. The fee for such examination and license shall be twenty dollars ($20.00).

History: En. Ch. 51, L. 1905; re-en. Sec. 1598, Rev. C. 1907; re-en. Sec. 3129, R. C. M. 1921; amd. Sec. 2, Ch. 108, L. 1953; amd. Sec. 145, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "For the support and maintenance of said board" at the beginning of the second sentence of subsection (3); and deleted the words "which shall be paid in advance to the secretary of said board to defray the expenses thereof" at the end of the second sentence of subsection (3).

66-1410. (3134) **Compensation of board—report to governor.** Each of the members of said board may receive as compensation a sum not to exceed twenty dollars ($20.00) for each day actually engaged in the duties of their office, together with all legitimate and necessary expenses incurred in attending the meetings of said board. The fees coming into said board shall be deposited into the state treasury to the credit of the earmarked revenue fund for the use of the state board of osteopathic examiners. Said board shall make an annual report of its proceedings to the governor of the state for the year ending on the thirty-first day of December preceding the making of said report. Said report shall be filed with the governor on or before the fifteenth day of January of each year.

History: En. Sec. 10, p. 51, L. 1901; re-en. Sec. 10, Ch. 51, L. 1905; re-en. Sec. 1603, Rev. C. 1907; re-en. Sec. 3134, R. C. M. 1921; amd. Sec. 146, Ch. 147, L. 1963; amd. Sec. 2, Ch. 206, L. 1967.

Amendments

The 1963 amendment deleted the words "Out of the funds coming into the possession of said board" at the beginning of the section; and substituted the second sentence for sentences reading, "No part of the compensation or other expenses of said board shall be paid out of the state treasury. The fees coming into the treasury of said board shall be paid out upon a warrant of the president and secretary thereof in payment of the compensation and expenses of said board in carrying out the provisions of this act."

The 1967 amendment substituted "a sum not to exceed twenty dollars ($20.00)" for "the sum of five dollars ($5.00)" in the first sentence.

Effective Date

Section 3 of Ch. 206, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 28, 1967.

CHAPTER 15—PHARMACY—REGULATION OF SALE OF DRUGS AND MEDICINES

Section 66-1505. Salaries and expenses of officers of board.
66-1508. Store license—certified pharmacy license—suspension or revocation.
66-1527. Disposition of fees and fines.

66-1505. (3175) Salaries and expenses of officers of board. Each member of the board shall receive five dollars ($5.00) a day for his actual services as such, and his necessary expenses in attending meetings. The secretary shall receive a salary to be fixed by the board, and all expenses necessarily incurred by him in the performance of his duties.

History: En. Sec. 645, Pol. C. 1895; re-en. Sec. 1627, Rev. C. 1907; re-en. Sec. 6, Ch. 134, L. 1915; re-en. Sec. 3175, R. C. M. 1921; amd. Sec. 5, Ch. 175, L. 1939; amd. Sec. 26, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted a final sentence reading, "The secretary shall give bond in such amount as the board may from time to time require, which bond shall be conditioned for the faithful performance of his duties and shall be approved by the board."

66-1508. Store license—certified pharmacy license—suspension or revocation. (a). * * * [Same as parent volume.]

(b) The state board of pharmacy shall require and provide for the annual registration and licensing of every pharmacy now or hereafter doing business within this state within the meaning of the act. Upon presentation of evidence satisfactory to the board and upon application upon such form as the board may prescribe and upon the payment of an annual fee of five dollars ($5.00), the board shall license any pharmacy as a "CERTIFIED PHARMACY," provided, however, that such license shall be granted only to such pharmacies as are operated by registered pharmacists or assistant registered pharmacists qualified as herein prescribed. Such license must be exposed in a conspicious place in the pharmacy for which it is issued, and shall expire on the thirtieth day of June following the date of issue. It shall be unlawful for any person to conduct such pharmacy, to use the word pharmacy to identify his business or to use the word pharmacy in any advertising unless such license has been duly issued and is in full force and effect.

(c). * * * [Same as parent volume.]

History: En. Sec. 8, Ch. 175, L. 1939; amd. Sec. 1, Ch. 76, L. 1959; amd. Sec. 1, Ch. 9, L. 1967.

Amendments

The 1967 amendment inserted "to use the word * * * in any advertising" preceding "unless such license" in the last sentence of subsection (b).

Sale of Unlabeled Drugs

A pharmacy license may be suspended for a single sale of unlabeled drugs in violation of section 66-1523. Western Drug of Great Falls v. Gosman, 141 M 8, 374 P 2d 507, 510.

66-1509. Judicial review of acts of board.

Jurisdiction

On review of an order of suspension of pharmacy license by the state board of pharmacy the district court has jurisdiction to annul the action of the board if the record before the court indicates that the board acted capriciously or arbitrarily, or without jurisdiction or authority. Western Drug of Great Falls v. Gosman, 141 M 8, 374 P 2d 507, 510.

Remand of Cause

On appeal to the district court by druggist from an order of suspension of pharmacy license by the state board of pharmacy, evidence of harshness and excessiveness of penalty was sufficient to require court to remand the cause to the board with instruction to place such evidence in the record for further consideration as it deemed proper. Western Drug of Great Falls v. Gosman, 141 M 8, 374 P 2d 507, 510.

Scope of Review

Additional testimony may not be received by the district court in reviewing an order of the board of pharmacy.

Western Drug of Great Falls v. Gosman, 141 M 8, 374 P 2d 507, 510.

The word "review" as used in this section means a judicial re-examination as of the proceedings of a lower court by a higher court. Western Drug of Great Falls v. Gosman, 141 M 8, 374 P 2d 507, 510.

66-1523. Wrongful labeling.

Suspension of License

A single sale of unlabeled drugs in violation of this section is ground for suspension of pharmacy license under section 66-1508. Western Drug of Great Falls v. Gosman, 141 M 8, 374 P 2d 507, 510.

66-1527. (3202.12) **Disposition of fees and fines.** All fines paid under the provisions of this act and all fees collected by or under the authority of the state board of pharmacy of the state of Montana for registration and licenses issued under this act shall be transmitted to the state board of pharmacy and by it deposited in the state treasury to the credit of the earmarked revenue fund for the use of the state board of pharmacy.

History: En. Sec. 6, Ch. 104, L. 1931; amd. Sec. 16, Ch. 175, L. 1939; amd. Sec. 134, Ch. 147, L. 1963.

Amendment

The 1963 amendment rewrote this section. For section prior to amendment, see parent volume.

CHAPTER 18—PUBLIC ACCOUNTANTS—REGULATION

Section 66-1812. Disposition of funds—expenses of board, how paid.

66-1812. (3241.12) **Disposition of funds—expenses of board, how paid.** All funds received under this act, or under or by virtue of prior accountancy laws shall be received by the university and paid into the general fund.

The members of the board of examiners in accountancy shall receive their actual traveling and hotel expenses incurred while engaged in the performance of their duties, as imposed upon them by this act, but shall receive no other compensation. Such expenses, together with the expense of preparing and issuing certificates, publishing notices of examinations, and all other expenses arising from the administration of this act shall be paid by the university.

History: En. Sec. 12, Ch. 46, L. 1933; amd. Sec. 233, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the general fund" for "the board of accountancy fund" at the end of the first paragraph; deleted "from the fees received from applicants" at the end of the second sentence in the second paragraph; and deleted a final sentence reading, "In no event shall any expenses arising from the administration of this act become a charge against the funds of the university or the state of Montana."

CHAPTER 19—REAL ESTATE LICENSE ACT

Section 66-1924. Title—license required.
66-1925. Definitions.
66-1926. Exempted classes.
66-1927. Real estate commission—members—districts—powers and duties—employees—compensation—disposition of fees.
66-1928. Disposition of excess over $7,500.00.
66-1929. Licenses—applicants for licenses.
66-1930. Written examination—contents—time and place—exemptions.

66-1931. License—issuance—suspension—revocation.
66-1932. License—delivery—display—pocket card.
66-1933. Bond of brokers and salesman.
66-1934. Fees—when due.
66-1935. Requirements for office—employment of salesmen—issuance and display of license.
66-1936. Transactions with nonresidents and with nonlicensed brokers or salesmen—consent to legal process.
66-1937. Grounds for refusal—suspension or revocation of license.
66-1938. Hearings—procedures.
66-1939. Appeal to court—supersedeas—bond.
66-1940. Penalties—legal actions.
66-1941. Action for compensation.
66-1942. Members of company—license required.
66-1943. Real estate meetings and clinics open to all licensees.
66-1944. Attorney for commission.
66-1945. Publication of directory.
66-1946. No repeal of section 94-1822.

66-1901 to 66-1923. (4056 to 4078) **Repealed.**

Repeal

These sections (Secs. 1 to 23, Ch. 195, L. 1921; Secs. 1, 2, Ch. 40, L. 1925; Sec. 1, Ch. 7, L. 1933; Sec. 1, Ch. 150, L. 1953; Sec. 1, Ch. 129, L. 1957; Sec. 1, Ch. 130, L. 1957; Sec. 1, Ch. 131, L. 1957; Sec. 1, Ch. 132, L. 1957), relating to real estate brokers, were repealed by Sec. 24, Ch. 250, Laws 1963.

66-1924. Title—license required. This act shall be known and may be cited as the "Real Estate License Act of 1963." From and after the effective date of this act it shall be unlawful for any person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business, or acting in the capacity of a real estate broker or a real estate salesman within this state without first having procured a license as such broker or salesman, as provided in this act.

History: En. Sec. 1, Ch. 250, L. 1963.

Title of Act

An act providing for the application, qualifications, bonding, licensing, supervision and regulation of real estate brokers and real estate salesmen; providing for the collection and disposition of fees; providing for a state real estate commission and defining its powers and duties; providing reciprocity of licenses, examination and consent to suit by nonresidents; providing grounds for denial, revocation or suspension of licenses; providing hearing procedure; providing for appeals from decisions of the commission and district court; prescribing fees and their disposal; providing penalties for the violation of this act or of any rule or regulation issued by the commission; containing a severability clause; repealing sections 66-1901 through and including 66-1923, Revised Codes of Montana, 1947, as amended by Chapter 129, Laws of 1957, Chapter 130, Laws of 1957, Chapter 131, Laws of 1957, and Chapter 132, Laws of 1957; providing section 94-1822 of the Revised Codes of Montana of 1947 shall not be amended, modified, or repealed by this act; and containing an effective date for this act; and repealing all acts and parts of acts in conflict herewith.

66-1925. Definitions. As used in this act, the following terms shall have the following meanings except where the context clearly indicates that another meaning is intended:

(a) The term "real estate" shall include leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, and whether the real estate is situated in this state or elsewhere.

(b) The term "broker" shall include any person or organization who for another, or for a fee, commission or other valuable consideration, or

who with the intent or expectation of receiving the same, negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange or lease of any real estate or of the improvements thereon, or collects rents or attempts to collect rents, or advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes any person or organization employed by or on behalf of the owner or owners, or lessor or lessors of real estate, to conduct the sale, leasing, subleasing or other disposition thereof at a salary or for a fee, commission or any other consideration; it also includes any person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale, lease or other disposition of real estate within this state through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both.

(c) The term "salesman" shall include any person who, for a salary, commission or compensation of any kind, is employed, either directly, indirectly, regularly or occasionally, by any real estate broker to sell, purchase or negotiate for the sale, purchase, exchange or renting of any real estate.

(d) The term "person" shall mean and include individuals, partnerships, associations and corporations, foreign and domestic.

(e) The term "he" shall mean and include "she" and "it." The term "his" shall mean and include "her" and "its."

History: En. Sec. 2, Ch. 250, L. 1963.

66-1926. Exempted classes. A single act performed, for a commission or compensation of any kind, in the buying, selling, exchanging, leasing or renting of real estate or in negotiating therefor for others, except as hereinafter specified, shall constitute the person performing any of such acts a real estate broker or real estate salesman. The provisions of this act, however, shall not (1) apply to any person who, as owner or lessor, shall perform any of the aforesaid acts with reference to property owned or leased by himself, or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by such owner or lessor, or (2) apply to any person acting as attorney in fact under the duly executed power of attorney from the owner of any real estate authorizing the final consummation of any contract for the purchase, sale, exchange, renting or leasing of any real estate, or (3) be construed to include in any way the services rendered by any attorney at law in the performance of his duty as such attorney at law, or (4) apply to any person duly appointed by a court for purpose of evaluation or appraising an estate in a probate matter, or (5) be held to include, while acting as such, a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust or will, or an auctioneer, employed by a receiver, trustee in bankruptcy, administrator, executor or trustee, to aid and assist in conducting a public sale held by any such officer, or (6) apply to

public officials in the conduct of their official duties, or (7) apply to any person, partnership, association or corporation, foreign and domestic, performing any act with respect to prospecting, leasing, drilling or operating land for hydrocarbons and hard minerals, or disposing of any hydrocarbons, hard minerals or mining rights therein, whether upon a royalty basis or otherwise.

History: En. Sec. 3, Ch. 250, L. 1963.

66-1927. **Real estate commission—members—districts—powers and duties — employees — compensation — disposition of fees.** (a) There is hereby created the Montana real estate commission, hereinafter referred to as the "commission," to consist of the commissioner of agriculture, who shall act as chairman of the commission, and four members, each of whom shall be a resident of this state, at least two of whom shall be active and licensed as real estate brokers and who have been actively engaged in the real estate business as a broker in this state for not less than five (5) continuous years prior to the date of appointments. The four members of the commission, other than the chairman, shall be appointed by the governor as follows:

Not more than two members shall be from the same congressional district, with no more than one eligible real estate broker residing in the same congressional district, and not more than three persons on the commission, including the chairman, shall be of the same political party. Upon the initial appointments, the first congressional district's two members shall be appointed for one year and the other for three years, and the second congressional district's members shall be appointed for two years and four years, respectively. Thereafter the term of each member shall be for four (4) years and until their successors are appointed and qualify. In the event of a vacancy on the commission, the governor shall fill the vacancy by appointing a resident from the same district as the member whose office has become vacant, to serve as a member for the unexpired term. If a member takes up residency in a district different from the one in which he resided at the time of appointment, he automatically vacates his commission position. Upon the qualification of the members appointed, the commission shall do all things necessary and proper for carrying out the provisions of this act, and shall from time to time promulgate rules and regulations not inconsistent herewith and make necessary amendments thereto.

(b) The chairman shall cause to be kept a record of all proceedings, transactions, communications and official acts of the commission, be custodian of all the records of the commission and shall cause to be performed such other duties as the commission upon the written request of two or more members of the commission or at such other times as the chairman may in his discretion deem necessary. The commission is authorized to employ such employees as may be necessary to properly carry out the provisions of this act, to fix the salaries of such employees, and to make such other expenditures as are necessary to properly carry out the provisions of this act. The office of the commission shall be maintained in the office of the commissioner of agriculture at the state

capitol at Helena, and all files, records and property of the commission shall at all times be and remain therein. Neither the chairman nor any employee of the commission may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

(c) Each member of the commission shall receive as compensation for each one-half day or portion thereof actually spent on his official duties the sum of seven dollars and fifty cents ($7.50) and his actual and necessary expenses incurred in the performance of any other duties provided for by the commission.

(d) The commission shall adopt a seal of such design as it shall prescribe. Copies of all records and papers in the office of the commission, duly certified by the chairman and authenticated by the seal of the commission, shall be received in evidence in all courts with like effect as the original. All records of the commission shall be open to public inspection under such reasonable rules and regulations as it shall prescribe.

(e) All fees collected under the provisions of this act shall be deposited at least monthly with the state treasurer and said funds so deposited shall be apportioned as follows:

Five per cent (5%) from each examination fee and twelve and one-half per cent (12½%) from all other fees collected shall be deposited to the credit of the general fund of the state to reimburse the state for its costs in administering this act.

The balance of said fees collected by the commission shall be deposited to the credit of the earmarked revenue fund and are hereby appropriated for the purposes of carrying out the provisions of this act. All expenditures from said funds by the commission under the provisions of this act shall be certified and approved by the chairman of the commission and paid by the appropriate state officials. Payment shall be made upon warrants appropriately drawn out of the proper funds. The commission shall provide a system of accounting which shall show the amount of money received therefor, and also an itemized statement of the expenses in connection therewith.

The commission shall have the power to make orders concerning the disbursement of the moneys in said earmarked revenue fund, including the payment of compensation and expenses of its members, clerks, employees, and board members.

(f) The commission shall have the power and authority to promulgate rules and regulations governing and regulating its internal operation and business meetings. The commission shall also have the power and authority to promulgate rules and regulations relating to the administration of this act but not inconsistent therewith.

History: En. Sec. 4, Ch. 250, L. 1963.

66-1928. Disposition of excess over $7,500.00. All moneys, investments and credits in excess of seven thousand five hundred dollars ($7,500.00) remaining in the state treasury to the credit of the commission in the earmarked revenue fund at the close of the license year on December 31st of each year, after the payment of all expenses for that year, shall on

or before the fifteenth day of the succeeding month be determined by the commission and shall be transferred from the earmarked revenue fund to the general fund to become available for general governmental purposes.

History: En. Sec. 5, Ch. 250, L. 1963.

66-1929. Licenses—applicants for licenses. (a) Licenses shall be granted only to persons who are deemed by the commission to be of good repute and competent to transact the business of a broker or salesman in such manner as to safeguard the interests of the public.

(b) Each applicant for a broker's license shall be a citizen of the United States, at least twenty-one (21) years of age, and must file an application for license with the commission. The commission shall require such information as it may deem necessary from every applicant to determine his honesty, trustworthiness and competency. Every officer of a corporation acting as a broker and every member of an association or partnership acting as a broker shall obtain a broker's license.

(c) Each applicant for a salesman's license shall be at least twenty-one (21) years of age and must file an application for license with the commission. His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect. The commission shall issue to each licensed broker and to each licensed salesman a license and a pocket card in such form and size as the commission shall prescribe.

History: En. Sec. 6, Ch. 250, L. 1963.

66-1930. Written examination—contents—time and place—exemptions. (a) In addition to proof of honesty, trustworthiness and good reputation, each applicant whose application is then pending shall satisfactorily pass a written examination prepared by or under the supervision of the commission. The examination shall be given at least once each six months and at such places within the state as the commission shall prescribe. The examination for a salesman's license shall include business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal, a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency and brokerage and the provisions of this act. The examination for a broker's license shall be of a more exacting nature and scope and more stringent than the examination for a salesman's license. An applicant who has failed twice in succession to pass the same class of examination shall be ineligible for a further examination until six months have passed; provided, however, that any resident of the state of Montana who was at the effective date of this act actively engaged in the real estate business as a licensed broker in this state may, upon complying with the other requirements for a broker's license, obtain a broker's license without examination if application therefor is made within ninety (90) days after the effective date of this act; and provided further that any person who has acted as a licensed salesman upon complying with the other requirements for a salesman's license may

obtain a salesman's license without an examination if application is made within ninety (90) days after the effective date of this act.

History: En. Sec. 7, Ch. 250, L. 1963.

66-1931. License—issuance—suspension—revocation. The commission shall have the full power to regulate the issuance of licenses and to revoke or suspend licenses issued under the provisions of this act.

History: En. Sec. 8, Ch. 250, L. 1963.

66-1932. License—delivery—display—pocket card. The commission shall prescribe the form of license. Each license shall have placed thereon the seal of the commission. The license of each real estate salesman shall be delivered or mailed to the real estate broker by whom the real estate salesman is employed, and shall be kept in the custody and control of such broker. It shall be the duty of each broker to display his own license conspicuously in his place of business. The commission shall annually prepare and deliver a pocket card certifying that the person whose name appears thereon is a registered real estate broker or a registered real estate salesman, stating the period for which fees have been paid and including, on real estate salesman's cards only, the name and address of the broker employing such real estate salesman.

History: En. Sec. 9, Ch. 250, L. 1963.

66-1933. Bond of brokers and salesman. No license shall be issued or renewed until the applicant for a broker's license or salesman's license has filed a bond with the commission in the sum of ten thousand dollars ($10,000.00), running to the state of Montana and executed by a surety company duly authorized to do business in the state of Montana. The bond shall be in a form approved by the commission and conditioned that the applicant shall conduct his business and himself in accordance with the provisions of this act. All bonds given by licensees under the provisions of this act, after approval, shall be filed and held in the office of the commission.

History: En. Sec. 10, Ch. 250, L. 1963.

66-1934. Fees—when due. To pay the expense of the maintenance and operation of the office of the commission and the enforcement of this act, a fee not to exceed the amount indicated below shall be charged by the commission and paid into the earmarked revenue fund for each of the following:

(a) For each examination, a fee not to exceed fifty dollars ($50.00).

(b) For each original resident broker's license issued, a fee not to exceed fifty dollars ($50.00).

(c) For each annual renewal of a resident broker's license, a fee not to exceed fifty dollars ($50.00).

(d) For each original nonresident broker's license issued, a fee not to exceed fifty dollars ($50.00).

(e) For each annual renewal of a nonresident broker's license, a fee not to exceed fifty dollars ($50.00).

(f) For each original salesman's license issued, a fee not to exceed twenty-five dollars ($25.00).

(g) For each annual renewal of a salesman's license, a fee not to exceed twenty-five dollars ($25.00).

(h) For each additional office or place of business, an annual fee not to exceed twenty-five dollars ($25.00).

(i) For each change of place of business or change of employer or contractual associate, a fee not to exceed twenty-five dollars ($25.00).

(j) For each duplicate license, where the original license is lost or destroyed and affidavit is made thereof, a fee not to exceed ten dollars ($10.00).

(k) For each duplicate pocket card, where the original pocket card is lost or destroyed and affidavit is made thereof, a fee not to exceed ten dollars ($10.00).

The commission shall at its first meeting prepare a schedule of fees within the limits set by this section. The commission may from time to time revise such schedule of fees within the limits herein provided; provided, however, a fee once set for any one of the items herein for which a fee is charged cannot be increased or decreased until at least one year has passed since the fee for that particular item was last increased or decreased.

All annual fees shall be due and payable for the ensuing year during the month of December of each year. Failure to remit annual fees before January 1 will automatically cancel such license, but otherwise said license will remain in full force and effect continuously from the date of issuance, unless suspended or revoked by said commission for just cause.

History: En. Sec. 11, Ch. 250, L. 1963.

66-1935. Requirements for office—employment of salesmen—issuance and display of license. (a) Each resident licensed broker shall maintain a fixed office within this state. The original license of the broker and the original license of each salesman in the employ of or under contract with such broker shall be prominently displayed in the office. The address of the office and any branch office shall be designated on the broker's license. In case of removal from the designated address, the licensee shall notify the commission before such removal or within ten days thereafter, designating the new location of this office, and paying the required fee, whereupon a license for the new location for the unexpired period shall issue.

(b) A salesman shall not be employed by or under contract to more than one licensed broker nor shall he perform services for any broker other than the one designated upon the license issued to the salesman. Whenever a licensed salesman desires to change his employment or contractual relationship from one licensed broker to another, he shall notify the commission promptly in writing of the facts attendant thereon, pay the required fee, and return his license and pocket card, and a new license and pocket card shall thereupon be issued. No salesman shall directly or

indirectly work for or with a broker until he has been issued a license to work for or with that broker. Upon termination of a salesman's employment or contractual relationship he shall surrender his license and pocket card to his broker, who shall return them to the commission for cancellation.

(c) Only one license shall be issued to any salesman to be in effect at one time.

History: En. Sec. 12, Ch. 250, L. 1963.

66-1936. Transactions with nonresidents and with nonlicensed brokers or salesmen—consent to legal process. (a) It is unlawful for any licensed broker to employ or compensate directly or indirectly any person for performing any of the acts regulated by this act who is not a licensed broker or licensed salesman; provided, however, that a licensed broker may pay a commission to a licensed broker of another state so long as such nonresident broker has not conducted and does not conduct in this state any service for which a fee, compensation or commission is paid; provided, further, this subsection shall not limit the provisions of the subsection following.

(b) A nonresident of this state, who is actively engaged in the real estate business, who maintains a place of business in another state and who has been duly licensed in such other state to conduct such business in that state, may obtain a license as a broker in this state by complying with all provisions of this act; provided, however, that this section shall apply only to those brokers of other states which offer the same privileges to the licensed brokers of this state. Such nonresident licensee need not maintain a place of business within this state. The commission may license such nonresident broker without examination, provided that he files with the said commission a duly authorized or certified copy of the license issued to such nonresident for the conducting of such business in any other state, and by paying to the said commission the same license fee as is herein provided for the obtaining of a broker's license in this state. The commission may in its discretion refuse to issue a broker's license to an applicant who is not a resident of this state.

(c) Every nonresident broker shall file an irrevocable written consent that legal actions arising out of any commenced or completed transaction may be commenced against such nonresident broker in any county of this state which may be appropriate and designated by section 93-2904; and such consent shall provide that service of summons in any such action may be served upon the chairman of the commission, for and on behalf of said nonresident broker, and such service shall be held to be sufficient to give the court jurisdiction over such nonresident broker and his salesman or agent conducting any such transaction in any county. The consent shall be duly acknowledged, and if made by a corporation, shall be authenticated by its seal. Any service of process or pleading made upon the commission shall be by duplicate copies, one of which shall be filed in the office of the commission and the other forwarded by registered mail to the last known principal address of the nonresident broker against whom

said process or pleading is directed. In any action in which service of process or pleading is made upon the commission no default shall be taken except upon certification of the chairman of the commission that a copy of said process or pleading was mailed to the defendant as herein provided. In actions in which service of process or pleading is made upon the commission, defaults may be entered and default judgments taken in the manner provided as in the case where publication of summons is had; provided the method of service of process or pleadings provided for by this section shall in no way limit section 93-2702, Revised Codes of Montana, 1947. (Rule 4, M.R. Civ. P.)

History: En. Sec. 13, Ch. 250, L. 1963.

66-1937. Grounds for refusal—suspension or revocation of license. The commission may, upon its own motion, and shall, upon the sworn complaint in writing of any person, investigate the actions of any real estate broker or any real estate salesman and shall have the power to revoke or suspend any license issued under this act whenever the broker or salesman has been found guilty by a majority of the commission of any of the following practices:

(1) Intentionally misleading, untruthful or inaccurate advertising, whether printed or by radio, display or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies or services of the business conducted;

(2) Making any false promises of a character likely to influence, persuade or induce;

(3) Pursuing a continued and flagrant course of misrepresentation, or making false promises through agents or salesmen, or any medium of advertising, or otherwise;

(4) Use of the term "realtor" by a person not authorized to do so, or using any other trade name or insignia of membership in any real estate organization of which the licensee is not a member;

(5) Failing to account for or to remit any money coming into his possession belonging to others;

(6) Accepting, giving or charging any undisclosed commission, rebate or profit on expenditures made for a principal;

(7) Acting in a dual capacity of broker and undisclosed principal in any transaction;

(8) Guaranteeing or authorizing or permitting any person to guarantee future profits which may result from the resale of real property;

(9) Offering real property for sale or lease without the knowledge and consent of the owner or his authorized agent or on any terms other than those authorized by the owner or his authorized agent;

(10) Inducing any party to a contract of sale or lease to break such contract for the purpose of substituting, in lieu thereof, a new contract with another principal;

(11) Accepting employment or compensation for appraising real property contingent upon the reporting of a predetermined value or issuing an appraisal report on real property in which he has an undisclosed interest;

(12) Negotiating a sale, exchange or lease of real property directly with an owner or lessor if he knows that such owner has a written outstanding contract in connection with such property, granting an exclusive agency to another broker;

(13) Soliciting, selling or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) Representing or attempting to represent a real estate broker, other than the employer, without the express knowledge or consent of the employer;

(15) Failing voluntarily to furnish a copy of any written instrument to any party executing the same at the time of its execution;

(16) Paying a commission or compensation to any person for performing the services of a real estate broker or real estate salesman who has not first secured his license under this act;

(17) Intentionally violating any reasonable rule or regulation promulgated by the commission in the interests of the public and in conformance with the provisions of this act;

(18) Failing, if a salesman, to place, as soon after receipt as is practicably possible, in the custody of his registered broker, any deposit money or other money entrusted to him by any person with him as a representative of his registered broker;

(19) Demonstrating his unworthiness or incompetency to act as a broker or salesman.

(20) Conviction of a felony.

History: En. Sec. 14, Ch. 250, L. 1963.

66-1938. Hearings — procedures. (a) Before the commission shall deny any application for a license or revoke or suspend a license, the applicant or licensee shall be entitled to a hearing. The hearing shall be held after twenty (20) days' notice to the applicant or licensee. In case of filing of charges against a licensee, a copy of such charges shall be attached to the notice and be sent by registered mail to the last known address of the licensee. The licensee shall file an answer to the charges, in triplicate, within twenty (20) days after notice has been mailed by the commission. The commission shall thereupon notify the parties to the dispute of the time and place of hearing, which shall be held in accordance with rules promulgated by the commission and in conformity with the laws of this state. If the applicant or license holder is a salesman, the commission shall also notify the broker employing him or in whose employ he seeks to enter by mailing such a notice to the broker's last known business address.

(b) The applicant or licensee shall have full authority to be heard in person or by counsel before the commission in reference to the denial of application on charges filed against him.

(c) In the preparation and conduct of such hearing, the chairman shall have power to issue and sign subpoenas to require the attendance and testimony of any witness and the production of any papers or books. He may administer oaths, examine the witnesses and take any evidence

he deems pertinent to the determination of the charges. Any witness so subpoenaed shall be entitled to the same fees and mileage as is prescribed by law in judicial proceedings in the district courts of this state in civil actions, but the payment of such fees and mileage must be paid out of and kept within the limits of the funds created from such license fees. The party against whom such charges may be filed shall have the right to obtain from the chairman a subpoena for any witnesses whom he may desire at such hearing. The chairman shall issue such subpoenas as desired by the party against whom the charges have been filed. Depositions may also be taken and used as in civil court cases in the district courts.

(d) Where, in any proceeding before the commission, any witness shall fail or refuse to attend upon the subpoena issued, or shall refuse to testify, or shall refuse to produce any records or documents, the production of which is called for by the subpoena, the attendance of the witness and the giving of his testimony, and the production of the documents and records may be enforced in the same manner as courts of competent jurisdiction enforce the attendance, testimony of witnesses and production of records in civil cases in the courts of this state.

History: En. Sec. 15, Ch. 250, L. 1963.

66-1939. Appeal to court—supersedeas—bond. (a) Any person aggrieved shall have the right of appeal from any adverse ruling, order or decision of the commission to the district court of the county in which he resides or maintains his business, or in the county where the hearing was held, within thirty (30) days from the service of notice of the action of the commission upon the parties thereto.

(b) Notice of appeal shall be filed in the office of the clerk of the court, which shall issue a writ of certiorari directed to the commission, commanding it, within ten (10) days after service thereof, to certify and file with the court a certified copy of the records of the case in which the appeal has been taken, including all documents and papers and a transcript of all testimony taken in the matter, together with the commission's findings, conclusions, and orders therein. The appeal shall be heard in due course without a jury by the court, which shall review the record, and after hearing thereon, make its determination of the cause.

(c) Any person taking an appeal to the district court shall post a bond in the amount of three hundred dollars ($300.00) for the payment of any costs which may be taxed against him.

(d) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the commission, the court may order that the additional evidence be taken before the commission upon conditions determined by the court. The commission may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings or decisions with the reviewing court.

(e) An appeal may be taken to the supreme court from a district court by the commission or by any person aggrieved from an adverse ruling, order or decision of the district court. Such appeal shall be taken within sixty (60) days after the order is made and entered in the minutes of the court filed with the clerk. The method and procedure of taking an appeal, together with the amount of the undertaking or deposit on appeal, shall be governed by Chapter 80 of Title 93, Revised Codes of Montana, 1947.

(f) Any order, rule or decision of the commission shall not take effect until after the time for appeal has expired. In the event an appeal is taken by a licensee or applicant, the appeal shall not act as a supersedeas unless the court so directs, and the court shall dispose of the appeal and enter its decision promptly.

History: En. Sec. 16, Ch. 250, L. 1963.

66-1940. Penalties—legal actions. (a) Any person acting as a broker or salesman without first obtaining a license shall be guilty of a misdemeanor and upon conviction thereof by a district court of this state shall be punishable by a fine of not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00) or by imprisonment for a term not to exceed ninety (90) days, or both. Upon conviction of a second or subsequent violation, the person shall be punishable by a fine of not less than five hundred dollars ($500.00) or more than two thousand dollars ($2,000.00) or by imprisonment for a term not to exceed six (6) months, or both.

(b) In case any person in a civil action is found guilty of having received any money, or the equivalent thereof, as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this act, he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

(c) Any person sustaining damages by failure of a real estate broker or real estate salesman to comply with the provisions of this act, shall have the right to commence an action in his own name against the real estate broker and his surety, or the real estate salesman and his surety, or both the broker and any salesman employed directly or indirectly by such broker and their respective sureties, for the recovery of any damages sustained as the result of any act specified in section 14 [66-1937] herein or as a result of the failure of the real estate broker or real estate salesman to comply with the provisions of this act. In all cases where suit is brought against the broker or the salesman, and his surety, the court shall, upon entering judgment for the plaintiff, allow as a part of the costs of suit a reasonable amount as attorney's fees.

All penalties provided for by this section may be collected from the broker's and salesman's bonds provided by section 10 [66-1933] of this act.

History: En. Sec. 17, Ch. 250, L. 1963.

66-1941. Action for compensation. Any person engaged in the business of or acting in the capacity of a real estate broker or real estate salesman within this state shall not be permitted to bring or maintain any action in the courts for the collection of compensation for the sale or lease or otherwise disposing of real estate without first alleging and proving that such person was a duly licensed real estate broker or real estate salesman at the time the alleged cause of action or claim arose.

History: En. Sec. 18, Ch. 250, L. 1963.

66-1942. Members of company—license required. Every member or officer of each partnership, association or corporation, who actively participates in the real estate brokerage business of such partnership, association or corporation, shall obtain a license as a real estate broker and every employee, who acts as a salesman for such partnership, association or corporation, shall hold a license as a real estate salesman.

History: En. Sec. 19, Ch. 250, L. 1963.

66-1943. Real estate meetings and clinics open to all licensees. (a) The commission is authorized to conduct, hold or assist in conducting or holding real estate clinics, meetings, courses or institutes and to incur the necessary expenses in connection therewith.

(b) The commission is authorized to assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees.

History: En. Sec. 20, Ch. 250, L. 1963.

66-1944. Attorney for commission. The attorney general of the state shall render to the commission opinions on all questions of law relating to the interpretation of this act or arising in the administration thereof. The attorney general shall further act as attorney for the said commission in all actions and proceedings brought by or against it under or pursuant to any of the provisions of this act; provided, all fees and expenses of the attorney general acting in such capacity shall be paid out of commission moneys in the earmarked revenue fund.

History: En. Sec. 21, Ch. 250, L. 1963.

66-1945. Publication of directory. The commission shall annually publish a directory of licensees, including a list of licenses suspended and revoked, which shall contain such other data as the commission may determine to be in the interest of real estate licensees and the public.

History: En. Sec. 22, Ch. 250, L. 1963.

66-1946. No repeal of section 94-1822. Nothing contained herein shall be construed to amend, modify or repeal section 94-1822 of the Revised Codes of Montana of 1947. This act shall be construed to be supplemental to said section 94-1822.

History: En. Sec. 25, Ch. 250, L. 1963.

Separability Clause

Section 23 of Ch. 250, Laws 1963 read "Unconstitutionality—severability. If any provision of this act is held invalid, that provision shall be deemed to be excised from this act and the invalidity thereof shall not affect any of the other provisions of this act. If the application of any provision of this act to any person or circumstance is held invalid, it shall not

affect the application of such provision to such persons or circumstances other than those to which it is held invalid."

Repealing Clauses

Section 24 of Ch. 250, Laws 1963 read "Repealing clause. This act expressly repeals sections 66-1901 through and including 66-1923, Revised Codes of Montana, 1947, as amended by Chapter 129, Laws of 1957, Chapter 130, Laws of 1957, Chapter 131, Laws of 1957 and Chapter 132, Laws of 1957."

Section 27 of Ch. 250, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 26 of Ch. 250, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 9, 1963.

CHAPTER 21—TITLE ABSTRACTERS—REGULATION

Section 66-2104. Compensation of members of board—disposition of funds.
66-2106. Reports of board.

66-2104. (4139.4) **Compensation of members of board—disposition of funds.** Each member of the board shall receive a compensation of five dollars ($5.00) per day for actual services while attending meetings or otherwise engaged upon business connected with the board, and shall receive ten cents ($0.10) per mile for each mile actually traveled, and the further sum of five dollars ($5.00) per day for expenses while absent from home upon business connected with the board.

All fees and moneys received under the provisions of this act shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the abstracters board of examiners.

History: En. Sec. 4, Ch. 105, L. 1931; amd. Sec. 124, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "which amount shall be paid upon verified vouchers after allowance by said board out of any funds in the hands of the state treasurer in the abstracters board fund" at the end of the first paragraph; deleted a first sentence of the second paragraph reading, "And there is hereby established a fund to be known as the abstracters board fund"; substituted "the earmarked revenue fund for the use of the abstracters board of examiners" at the end of the section for "the abstracters board fund, to meet the expenses incurred in carrying out the provisions of this act"; and deleted from the end of the section a proviso reading, "provided, the expenses of said board shall not exceed the fees collected."

66-2106. (4139.6) **Reports of board.** Said board shall make a biennial report to the governor, which report shall contain a full statement of its receipts and disbursements for the preceding biennial term; also a full statement of its doings and proceedings and such recommendations as to it may seem proper for the better carrying out of the intents and purposes of this act.

History: En. Sec. 6, Ch. 105, L. 1931; amd. Sec. 125, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "which said report shall not be printed except as the expense of the fund herein provided for" from the end of the section.

CHAPTER 22—VETERINARY MEDICINE—REGULATION OF PRACTICE

Section 66-2203. Expenses and funds—records and reports.
66-2204. Applications for license to practice—examinations—fees.
66-2209. Veterinary medicine defined.
66-2209.1. When pregnancy testing by unlicensed persons permitted.
66-2209.2. Statutory exemptions saved.

66-2203. (3219) **Expenses and funds — records and reports.** Each member of the board shall be entitled to receive all necessary traveling and subsistence expenses. The secretary-treasurer shall receive an additional salary to be fixed annually by the board and not to exceed five hundred dollars ($500.00) per annum. The board shall keep full and complete minutes of its proceedings and of its receipts and disbursements and a full and accurate list of all persons licensed and registered by it, and such records shall be public records, and shall, at all times, be open to public inspection. All moneys received by the board shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of veterinary examiners. Said board shall, not later than July fifteenth of each year, submit to the governor a full and complete report of its proceedings during the twelve (12) months immediately preceding.

History: En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R. C. M. 1921; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L. 1965.

Amendments

The 1963 amendment deleted from the end of the first sentence a proviso reading, "provided such expenses shall not exceed the amount in the treasury during any fiscal year"; and substituted the fifth sentence (now the fourth sentence) for two sentences reading, "The secretary-treasurer of said board shall be the legal custodian of all moneys received for licenses or certificates of registration, as provided by this article, up to and including the sum of five thousand dollars ($5,000.00). If, at any time, the amount of moneys received, after deducting such salaries and expenses, shall amount to more than five thousand dollars ($5,000.00), the secretary-treasurer shall forward the amount in excess of five thousand dollars ($5,000.00) to the treasurer of the state of Montana, and receive his official receipt for same."

The 1965 amendment deleted a third sentence reading, "The board shall require the secretary-treasurer to give bond in such sum and with such conditions as the board may from time to time direct."

66-2204. (3220) **Applications for license to practice—examinations—fees.** Any citizen of the United States who is over the age of twenty-one (21) years desiring to begin the practice of veterinary medicine or veterinary surgery in the state of Montana, or who shall desire to hold himself or herself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in section 66-2211, shall make application to said board of examiners for license so to do. Such application shall be upon a form furnished by said board, and shall be accompanied by satisfactory evidence of the good moral character of the applicant, and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a photostatic copy of the diploma of said applicant shall be submitted to said board for inspection and verification, and such photostatic copy shall be and remain the property of the board. Every person applying to said board for license to practice shall pay to the board the fee of twenty-five dollars ($25.00), which fee shall in no case be refunded. Said board shall by means of examination, either oral or written or practical, or such combination of oral or written or practical as the board may determine, ascertain the professional qualifications for license of all applicants under this act, except that investigation under reciprocity arrangements may replace examination for licensees

from other states as provided by section 66-2208, and the board shall issue such license to all who are found upon such examination or investigation to be in the judgment of said board competent to practice, and no such license shall be issued to any person who is not found by such examination or investigation to be competent.

Such examination shall be held in January and June of each year at a time and place or places specified by said board. Such examination shall cover theory and practice, materia medica and therapeutics, livestock sanitation, surgery, and communicable diseases and such other subjects chosen by the board as are ordinarily included in the curriculum of a legally chartered school of veterinary medicine recognized and approved by the American veterinary medical association.

Said board shall consecutively number all applications received and note upon each the disposition made of it and preserve same for reference, and shall number consecutively all licenses issued; provided, that veterinarians who are at the time of the passage and approval of this act licensed and registered to practice veterinary medicine in the state of Montana, shall be entitled to a license without such examination.

All applicants must achieve a grade of seventy per cent (70%) in all subjects in order to obtain a license. An applicant who has failed an examination may apply to be re-examined at any subsequent examination, shall pay another application fee in the amount of twenty-five dollars ($25.00), and shall take another complete examination in all subjects.

An applicant for examination hereunder may in the discretion of the board be given a temporary permit to practice veterinary medicine prior to taking the examination, provided such applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this act; such temporary permit shall be valid only until the date of the next succeeding examination, and no longer, and under no circumstances shall the board issue a second temporary permit to the same person. A temporary permit shall not be issued to a person who has failed an examination given by the board.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R. C. M. 1921; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "and which shall become a part of the funds of the treasury of the board" at the end of the fourth sentence of the first paragraph.

66-2209. (3225) **Veterinary medicine defined.** Any person shall be deemed in the practice of veterinary medicine when he does any of the following:

(a) to (d). * * * [Same as parent volume.]

(e) Performs any manual or laboratory procedure for the diagnosis of pregnancy, sterility or infertility upon livestock for remuneration or hire.

No person shall practice veterinary medicine or veterinary surgery, or farriery, in the state of Montana unless licensed by the state board of

veterinary medical examiners of the state of Montana, and registered as required by this chapter; nor shall any person practice veterinary medicine, surgery, or farriery, whose authority to practice is suspended or revoked by said board.

History: En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R. C. M. 1921; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965.

Amendment

The 1965 amendment added paragraph (e).

66-2209.1. When pregnancy testing by unlicensed persons permitted. Nothing in this act shall in any way be construed to prohibit the pregnancy testing by any person of his own farm animals or by his employees regularly employed in the conduct of his business, or by other persons whose services are rendered gratuitously.

History: En. Sec. 2, Ch. 191, L. 1965.

Title of Act

An act to amend section 66-2209 of the Revised Codes of Montana of 1947, as amended by chapter 90 of the Laws of 1955, relating to the definition of veterinary medicine; by including in such definition the performance of procedure for diagnosis of pregnancy, sterility or infertility upon livestock for remuneration.

66-2209.2. Statutory exemptions saved. Nothing herein contained shall be construed as modifying, amending, altering, or repealing any part of section 66-2211 of the R. C. M. of 1947.

History: En. Sec. 3, Ch. 191, L. 1965.

CHAPTER 23—ENGINEERS AND LAND SURVEYORS

Section 66-2333. Receipts and disbursements—secretary—assistants.

66-2324. Registration required.

References

Heldenbrand v. Montana State Board of Registration for Professional Engineers and Land Surveyors, — M —, 411 P 2d 744.

66-2333. Receipts and disbursements—secretary—assistants. The secretary of the board shall receive and account for all moneys derived under the provisions of this act, and shall pay the same monthly to the state treasurer, who shall deposit such moneys in the earmarked revenue fund for the use of the state board of registration for professional engineers and land surveyors. The secretary of the board shall receive such salary as the board shall determine in addition to the compensation and expenses provided for in section 66-2329. The board may appoint an assistant secretary or executive secretary or may employ such clerical or other assistants as are necessary for the proper performance of its work.

History: En. Sec. 10, Ch. 150, L. 1957; amd. Sec. 123, Ch. 147, L. 1963; amd. Sec. 28, Ch. 177, L. 1965.

Amendments

The 1963 amendment substituted "deposit such moneys in the earmarked revenue fund for the use of the state board of registration for professional engineers and land surveyors" at the end of the first sentence for "keep such moneys in a separate fund to be known as the 'professional engineers' fund'"; deleted the former second and third sentences reading, "Such fund shall be kept separate and apart from all other moneys in the treasury, and shall be paid out only by warrants drawn by the state auditor, upon claims filed and approved as required by law. All moneys in the 'professional engi-

neers' fund' are hereby specifically appropriated for the use of the board"; deleted "and shall be paid out of the 'professional engineers' fund'" from the end of a third sentence later deleted by the 1965 amendment; and deleted from the end of the section language reading, "and may make expenditures of this fund for any purpose which in the opinion of the board is reasonably necessary for the proper performance of its duties under this act, including the expenses of the board's delegates to annual conventions of, and membership dues to, the national council of state boards of engineering examiners. Under no circumstances shall the total amount of warrants issued by the state auditor in payment of the expenses and compensation provided for in this act exceed the amount of the examination and registration fees collected as herein provided."

The 1965 amendment deleted second and third sentences reading, "The secretary of the board shall give a surety bond to the state in such sum as the board may determine. The premium on said bond shall be regarded as a proper and necessary expense of the board."

66-2336. Requirements for registration.

Examination of Registrant

State board was within its right to refuse engineer certification where he had failed the board's examination, and was not required to issue a certificate of registration simply because the registrant had worked for twelve years as an engineer and had just passed his thirty-fifth birthday. Heldenbrand v. Montana State Board of Registration for Professional Engineers and Land Surveyors, — M —, 411 P 2d 744.

66-2345. Revocation of registration—hearings—reissuance, etc.

Constitutionality

There is no unconstitutional supplanting of administrative powers and authority by the courts in the procedure stipulated in this section for appeal, since the court still must follow statutory guidelines in making corrections, where necessary, of the administrative body's exercise of judgment. Heldenbrand v. Montana State Board of Registration for Professional Engineers and Land Surveyors, — M —, 411 P 2d 744.

Right of Appeal

The right of appeal under this section applies not only to cases where registration is revoked or reissuance of a certificate already revoked is denied but also to cases involving an original application for registration. Heldenbrand v. Montana State Board of Registration for Professional Engineers and Land Surveyors, — M —, 411 P 2d 744.

CHAPTER 24—PLUMBERS

Section 66-2402. Application for state license—qualifications of licensees.
66-2403. Board of plumbing examiners—appointment—terms—compensation—examination of applicants.
66-2405. Examination fee—expiration of license—annual renewal—fees—bond required of master plumbers.
66-2407. Disposition of license fees.
66-2427. Fixture fee—definition—payment—penalty.

66-2402. Application for state license—qualifications of licensees. Any such person desiring to work at the business of plumbing in any such city or town shall file his application for a state license with the secretary of the board of plumbing examiners of the state of Montana, and shall at such time and place as may be designated by the board of examiners of plumbers of the state of Montana, be examined as to his qualifications for working in such business.

The following requirements shall be met by applicants for a state license: (1) For journeyman plumbers:

(a) A specific record of five years experience in the field of plumbing, of a character satisfactory to the board. This experience requirement may

be fulfilled by working five years in any major phase of the plumbing business, or by completing an apprenticeship program meeting the standards set by the Montana state apprenticeship council or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent attending trade or other schools specializing in training of value in the plumbing business and approved by the board.

(b) Satisfactory completion of an examination conducted by the board testing the applicant's general knowledge of subjects necessary to plumbing, testing his knowledge of techniques and methods employed in the plumbing business, and establishing by practical demonstration his competence in the special skills required in plumbing.

(2) For master plumbers:

(a) Evidence of five years experience as a journeyman plumber.

(b) Evidence of three years experience in supervisory capacities in the plumbing business.

(c) Satisfactory completion of an examination for master plumbers testing his knowledge of the plumbing business and demonstrating his familiarity with business practices normally encountered in the plumbing business.

History: En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965.

Amendment

The 1965 amendment added everything after the first paragraph.

66-2403. Board of plumbing examiners—appointment—terms—compensation—examination of applicants. Within sixty days after this act becomes a law, the governor of the state of Montana shall appoint a board of plumbing examiners consisting of seven members—two master plumbers, two journeyman plumbers, who shall be of legal age, residents of Montana for more than one year and shall have been at least five out of the last eight years, immediately preceding their appointment, duly licensed master or journeyman plumbers, one registered professional engineer, qualified in mechanical engineering, one member to be appointed at large as representative of the public who is not engaged in the business of installing or selling plumbing equipment, and the appointed representative of the Montana state board of health, who shall be a sanitary engineer and who shall be the secretary of the state board of plumbing examiners. The office of the engineer of the state board of health shall act as the office through which all business of the board shall be transacted. The appointed members of this board of plumbing examiners shall serve for a period of four years from the date of their appointment, providing however, the first board of plumbing examiners shall serve as follows: one member for one year, one member for two years, one member for three years and one member for four years and the governor in making the appointment shall designate the time that each member constituting the first board shall serve. Thereafter, upon the expiration of the term of office of each member of the board of plumbing examiners or when a vacancy occurs, the governor shall make a new appointment for the unexpired term or for a period of four years. The journeyman plumber whose term would next expire after passage and approval of this act is hereby removed

from said board and in his place and stead shall be installed said registered professional engineer, qualified in mechanical engineering. The members of the said board shall be entitled to a compensation of twenty dollars per diem, each, for each and every day while actually engaged in the work of the board, the compensation, however, to be paid from the revenue realized under the provisions of this act, but not otherwise. Any applicant for a state license to work at the business of plumbing in this state shall be examined as to his qualifications by the board of examiners of plumbers for the state of Montana. It shall be the duty of the said board to examine each applicant for a state license as provided for in this act, to determine his qualifications and fitness for carrying on the business of a master plumber or journeyman plumber, and if the applicant successfully passes the examination as prescribed by the said board, then a state license shall be issued to such applicant for such license, authorizing him to engage in the business and occupation of a master plumber or journeyman plumber, as the case may be, which license, when issued, shall authorize the holder thereof to carry on the business of a master plumber or a journeyman plumber, as the case may be, in any city or town in the state of Montana.

The additional members of the board shall be appointed by the governor to serve terms commencing July 1, 1965. The additional master plumber's term shall be coextensive with the present journeyman plumber's term, and the additional journeyman plumber's term shall be coextensive with the present master plumber's term, and thereafter their respective terms shall be for four years.

History: En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959; amd. Sec. 2, Ch. 185, L. 1961; amd. Sec. 143, Ch. 147, L. 1963; amd. Sec. 2, Ch. 186, L. 1965.

Amendments

The 1963 amendment deleted the words "the compensation, however, to be paid from the revenue realized under the provisions of this act, but not otherwise" at the end of the sixth sentence.

The 1965 amendment added one master plumber and one journeyman plumber to the board; restored to the sixth sentence the words deleted by the 1963 amendment; and added the second paragraph.

66-2405. Examination fee—expiration of license—annual renewal—fees—bond required of master plumbers. No applicant for a master plumber's license shall be entitled to submit to the examinations prescribed by the said board of plumbing examiners until he shall have deposited with the secretary of the said board the sum of fifty ($50.00) dollars as an examination fee, and no applicant for a journeyman plumber's license shall be entitled to submit to the examination prescribed by the said board of plumbing examiners until he shall have deposited with the secretary of said board the sum of twenty-five ($25) dollars as an examination fee. Each state license when issued shall expire one year from the date of its issuance, and shall have no force or effect after the expiration of one year after the date of its issuance. Any state license, however, issued to a master plumber or a journeyman plumber shall be renewed annually, without examination, at any time prior to its expiration, by a written request for its renewal, directed to the secretary of the said board of plumbing examiners, and the payment of the sum of twenty-five ($25)

dollars for a renewal of a master plumber's license, and the sum of ten ($10) dollars for a journeyman plumber's license, and any such renewal shall also be for the period of one year. After July 1, 1961, no master plumber's license shall be issued or renewed unless and until the applicant therefor shall have deposited with the board a good and sufficient bond to be approved by the board, or cash in lieu thereof, in the amount of five thousand dollars ($5,000) to insure the faithful performance of his duties arising out of the provisions of the state plumbing code or the provisions of chapter 24, Title 66, Revised Codes of Montana.

History: En. Sec. 5, Ch. 203, L. 1949; amd. Sec. 3, Ch. 185, L. 1961; amd. Sec. 1, Ch. 237, L. 1965.

Amendment

The 1965 amendment increased the examination fees specified in the first sentence from $25 to $50 for master plumbers, and from $10 to $25 for journeyman plumbers; and increased the renewal fees specified in the second sentence from $10 to $25 for master plumbers, and from $5 to $10 for journeyman plumbers.

66-2407. Disposition of license fees. All moneys paid for state license fees as provided for in this act shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the board of plumbing examiners.

History: En. Sec. 7, Ch. 203, L. 1949; amd. Sec. 144, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the words "deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the board of plumbing examiners" for the words "placed in the custody of the state treasurer, who shall keep such sums in a distinct fund, and any moneys in such fund shall be applied in defraying any expenses incurred by the state board of examiners of plumbers in carrying out the provisions of this act" at the end of this section.

66-2418. Repealed.

Repeal

This section (Sec. 7, Ch. 251, L. 1959), relating to payment of expenses of the board, was repealed by Sec. 242, Ch. 147, Laws 1963.

Compiler's Note

Section 3, Ch. 186, Laws 1965, purported to amend this section, but the attempted amendment is apparently void under the provisions of sec. 43-515. As amended in 1965, the section would have read:

"66-2418. Expenses—defraying. Any moneys paid for state license fees for state plumber licenses, as provided for in Title 66, chapter 24 [66-2401 to 66-2411] of the laws of the state of Montana, may be applied in defraying the expense of the board in carrying out the provisions of this act.

"For the purpose of providing adequate inspection and enforcement of the state plumbing code provided for in this chapter there shall be collected a fixture fee of fifty cents per fixture for every fixture installed after July 1, 1965. For this purpose, a fixture shall mean any device connected by a water connection to a water system or by a trap to a sewer line. This fixture fee shall be payable before installation by the licensed master plumber responsible for installation of the fixture. It shall be payable to the state plumbing board under regulations prescribed by the board for the purposes set forth herein, and the board may assign the inspection and enforcement of the state plumbing code and collection of such fees to a state plumbing inspector, and such deputies as may be reasonably necessary to accomplish adequate inspection, enforcement and collection. Installation of fixtures as defined herein by a licensed master plumber without payment of the fee herein provided shall subject such master plumber to a fine of $100 for each offense or to forfeiture of his bond under section 66-2405."

66-2427. Fixture fee—definition—payment—penalty. For the purpose of providing adequate inspection and enforcement of the state plumbing code provided for in this chapter there shall be collected a fixture fee

of fifty cents ($.50) per fixture for every fixture installed under the direction of a master plumber after the effective date of this act. For this purpose, a fixture shall mean any device connected by a water connection to a water system or by a trap to a sewer line. This fixture fee shall be payable before installation by the licensed master plumber responsible for installation of the fixture. It shall be payable to the state plumbing board under regulations prescribed by the board for the purpose set forth herein, and the board may assign the inspection and enforcement of the state plumbing code and collection of such fees to a state plumbing inspector, and such deputies as may be reasonably necessary to accomplish adequate inspection, enforcement and collection. Installation of fixtures as defined herein by a licensed master plumber without payment of the fee herein provided shall subject such master plumber to a fine of one hundred dollars ($100) for each offense or to forfeiture of his bond under section 66-2405.

History: En. Sec. 1, Ch. 236, L. 1967.

Title of Act

An act to amend chapter 24 of Title 66, R. C. M. 1947, by adding a new section thereto establishing a fixture fee to be used for the inspection and enforcement of the State Plumbing Code and authorizing a state plumbing inspector, and providing for a penalty for failure to pay the fixture fee established; and repealing acts or parts of acts in conflict herewith; and providing an effective date.

Separability Clause

Section 2 of Ch. 236, Laws 1967 read "If any part of this act shall for any reason be held invalid or unenforceable, the invalidity or unenforcibility thereof shall not affect any of the remaining parts of this act."

Repealing Clause

Section 3 of Ch. 236, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 236, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 1, 1967.

CHAPTER 25—PHYSICAL THERAPISTS PRACTICE ACT

Section 66-2503. Application for examination—examination fee.

66-2503. Application for examination—examination fee. Unless entitled to a license under section 66-2504 or 66-2505, a person who desires to be licensed as a physical therapist shall apply to the board, in writing, on a blank furnished by the board. He shall embody in that application evidence under oath, satisfactory to the board, of his possessing the qualifications preliminary to examination required by section 66-2502. He shall pay to the secretary of the board of medical examiners at the time of filing his application a fee of twenty-five dollars ($25.00) which shall be deposited in the earmarked revenue fund for the use of the board of medical examiners. Anyone failing to pass the required examination shall be entitled to a second examination within six months without additional fee.

History: En. Sec. 3, Ch. 39, L. 1961; amd. Sec. 133, Ch. 147, L. 1963.

Amendment

The 1963 amendment inserted the words "which shall be deposited in the earmarked revenue fund for the use of the board of medical examiners" at the end of the third sentence and deleted a former fourth sentence which read: "This fee will become part of the board of medical examiners' fund and shall not be used or expended for any purpose other than as provided for in section 66-1009."

CHAPTER 26—WATER WELL CONTRACTOR'S LICENSE ACT

Section 66-2604. Water well contractor's examining board—members—terms—oath—seal—employees.
66-2605. Powers and duties of the board.
66-2606. Water well contractor's licenses.
66-2615. Completion of contracts by successor in interest of licensed contractor.

66-2602. Purpose of the act—definitions—exemptions.

History: En. Sec. 2, Ch. 176, L. 1961; amd. Sec. 2, Ch. 234, L. 1963.

Compiler's Note

Section 2, Ch. 234, Laws 1963, purported to amend this section, but it made no change.

66-2604. Water well contractor's examining board—members—terms—oath—seal—employees. (1) to (4). * * * [Same as parent volume.]

(5) The board may, in its discretion, employ a secretary and such other persons as may be necessary to perform the duties of the board, either upon a part-time basis or upon a full-time basis. The appointed member of the board shall receive, as compensation for his services, the sum of fifteen dollars ($15.00) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and per diem expenses as provided by law. The state engineer and the director of environmental sanitation of the state board of health of the state of Montana shall receive no extra compensation for their services as members of the board.

History: En. Sec. 4, Ch. 176, L. 1961; amd. Sec. 152, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted from subd. (5) a former second sentence which read: "Payment for any such services shall be made out of the hereinafter designated fund, and no other" and a former fourth sentence which read: "Such payments to the appointed member of compensation, mileage and per diem expenses shall be made out of the hereinafter designated fund, and no other."

66-2605. Powers and duties of the board. (1) to (4). * * * [Same as parent volume.]

(5) Within one hundred twenty (120) days of the effective date of this act, the board shall organize and conduct a public hearing for the purpose of adopting reasonable rules and regulations for the future conduct of its business. Such hearing shall be had only after at least ten (10) days' printed notice of the same has been given, announcing the hearing, the time, the place and the purpose therefor. Publication shall be made in at least five (5) daily newspapers in this state. Following such hearing, said rules and regulations shall be adopted and compiled in printed form for distribution to interested persons, for which the board may charge a fee; and sums realized from such sales shall be deposited with the treasurer of this state in the earmarked revenue fund for the use of the water well contractor's examining board.

(6). * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 176, L. 1961; amd. Sec. 153, Ch. 147, L. 1963; amd. Sec. 3, Ch. 234, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147 and once by Ch. 234. Neither amendatory act mentioned nor included the changes made by the other.

Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 147, Laws 1963, substituted "the earmarked revenue fund for the use of the water well contractor's examining board" at the end of subsection (5) for language reading, "a special fund to be designated as the 'Water Well Contractor's Examining Board Fund,' and the funds therein shall be used for the purpose of paying expenses of the board, and for no other purpose. All sums expended from this fund shall be approved as provided by law. Upon termination of this board, any balance remaining in said fund shall be paid over to the general fund of the state of Montana. All accounts and expenditures of said board shall be certified by the board, approved by the board of examiners of the state of Montana, and paid by the state treasurer upon warrants drawn by the state auditor out of said fund."

Chapter 234, Laws 1963, substituted "for which the board may charge a fee" in the fourth sentence of subsection (5) for "The board shall charge a fee of fifty cents (50¢) per copy"; and made minor changes in punctuation.

66-2606. Water well contractor's licenses. Any person desiring to engage in the drilling, making or construction of one (1) or more wells for underground water in this state shall first file an application with the board for a contractor's license, setting out his qualifications therefor, the equipment proposed to be used in such contracting, and such other business as may be required by the board, all upon forms to be adopted by the board. The board shall charge a fee of one hundred dollars ($100.00) for the filing of such application by any person, and it shall not act upon any application until such fee has been paid. All fees collected hereunder shall be deposited with the state treasurer in the earmarked revenue fund for the use of the water well contractor's examining board. A license to construct water wells shall be issued to any applicant if, in the opinion of the board, such applicant is qualified to conduct water well construction operations. In the granting of such licenses, the board shall have due regard for the interest of the state of Montana in the protection of its underground waters. Applicants for licenses hereunder who have engaged in the business of water well drilling or construction for a period of more than three (3) years prior to the effective date of this act, and who have been bona fide residents of the state of Montana for more than one (1) year preceding the date of application, may, at any time within one (1) year after the effective date of this act make application for license hereunder and payment of the fee of one hundred dollars ($100.00), as herein provided, and the board shall issue a license to any such applicant without examination, when he shall submit evidence, under oath, satisfactory to the board that he is of good character, that he was engaged in the occupation of water well contractor at the time this act became effective, and that his work as such is satisfactory to the board. All other applicants shall be subject to examination as hereinafter provided.

A temporary water well contractor's license may be issued to a person who, by evidence satisfactory to the board, is found to possess the qualifications numbered (1) through (6) set out in section 66-2608, R.C.M., 1947, and who shall have applied for license as provided by this act. Such temporary license shall entitle the holder thereof to engage in the business of drilling, making or construction of water wells until the time of the next ensuing examination given by the board. Upon such applicant's successfully meeting the board's requirements upon such examination, the

temporary license shall be returned to the board and a regular license issued. Should the holder of a temporary license fail, after notice of the holding of such examination, to submit himself for examination or to meet the board's requirements, such temporary license shall expire and be returned to the board for cancellation.

History: En. Sec. 6, Ch. 176, L. 1961; amd. Sec. 154, Ch. 147, L. 1963; amd. Sec. 4, Ch. 234, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147 and once by Ch. 234. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 147, Laws 1963, substituted "earmarked revenue fund for the use of the water well contractor's examining board" for "water well contractor's examining board fund, and shall be used to pay expenses of the board as set forth in this act, and for no other purpose" at the end of the third sentence.

Chapter 234, Laws 1963, added the second paragraph.

66-2615. Completion of contracts by successor in interest of licensed contractor. Upon the transfer, by operation of law, to the successor in interest of a licensed water well contractor's rights under a contract or agreement for the drilling or making of a water well or wells, the successor in interest to such rights shall be permitted to engage in the business of drilling, making or construction of water wells to the extent necessary to perform the obligations of said licensed water well contractor under such contract or agreement, provided that such engagement in business shall be under the supervision of a licensed water well contractor.

History: En. Sec. 1, Ch. 234, L. 1963.

Title of Act

An act to permit the successor in interest to the rights of a licensed water well contractor under a contract for water well construction to engage in the water well construction business to the extent necessary to fulfill said contractor's obligations and providing conditions therefor; amending section 66-2602, R. C.M., 1947, as amended, to permit compliance with the examination and licensing provisions of the Montana Water Well Contractor's License Act by any one member of a firm, copartnership or association or the manager of a corporation; amending section 66-2605, R.C.M., 1947, as amended, to make permissive the exacting of a fee for copies of board rules and regulations; and amending section 66-2606, R.C.M., 1947, as amended, to permit the temporary licensing of a water well contractor prior to examination for competency and providing conditions therefor.

CHAPTER 27—MORTICIANS AND FUNERAL DIRECTORS

Section 66-2701. Definitions.
66-2702. State board of morticians—appointment and term of office.
66-2703. Officers of board—compensation of members.
66-2704. Meetings—quorum—rules and regulations.
66-2705. Employees of board.
66-2706. Disposition of fees.
66-2707. Funeral directing.
66-2708. Embalming and mortuary science—qualifications for mortician's license.
66-2709. Examination for morticians.
66-2710. Intern mortician's license.
66-2711. Mortician's license—fee and renewal.
66-2712. Reciprocity.
66-2713. Operation and licensing of mortuaries.

66-2714. Refusal to grant, suspension and revocation of mortician's and funeral director's license.
66-2715. Hearing and notice—revocation and suspension of licenses.
66-2716. Appeal.
66-2717. Penalty provision.

66-2701. Definitions. As used in this act

(1) "Board" means the state board of morticians.

(2) "Funeral directing" includes

(a) supervising funerals,

(b) preparing dead bodies for burial other than by embalming,

(c) maintaining a mortuary for the preparation, disposition or care of dead human bodies, and

(d) the holding out to the public that one is a funeral director or undertaker.

(3) "Embalming" means the preservation and disinfection of the dead human body by application of chemicals externally, internally, or both.

(4) "Mortuary science" is the profession or practice of funeral directing and embalming.

(5) A "mortician" is a person licensed under the laws of the state of Montana to practice mortuary science.

(6) A "mortuary" is a place of business used for the care and preparation for burial or transportation of dead human bodies, or a place where a person represents himself as engaged in the profession of mortuary science or funeral directing.

History: En. Sec. 1, Ch. 41, L. 1963.

Title of Act

An act regulating the operation of mortuaries and the practice of mortuary science and funeral directing; establishing a state board of morticians; amending sections 69-119, 69-2306, 69-2309, 69-2310, and 9-604, R.C.M. 1947; and repealing sections 82-701, 82-702, 82-703, 82-704, 82-705, 82-706, 82-707, 82-708, 82-709, 82-710, and 82-711, R.C.M. 1947.

66-2702. State board of morticians—appointment and term of office. There is in state government a state board of morticians consisting of five licensed morticians appointed by the governor with the advice and consent of the senate. The original members of the board shall be appointed for one (1), two (2), three (3), four (4), and five (5) year terms. An appointment to replace a member whose term has expired shall be for five (5) years. An appointment to replace a member whose term has not expired shall be for the remainder of the term.

History: En. Sec. 2, Ch. 41, L. 1963.

66-2703. Officers of board—compensation of members. The board shall elect a chairman, a secretary-treasurer, and any other necessary officers. Board members shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in attending meetings or in the discharge of other board duties. In addition to such reimbursement the secretary-treasurer may be paid a salary set by the board.

History: En. Sec. 3, Ch. 41, L. 1963.

66-2704. Meetings—quorum—rules and regulations. The board shall hold such meetings as may be necessary. Three members constitute a quorum for the transaction of business. The board may adopt and enforce rules and regulations to carry out the purposes of this act.

History: En. Sec. 4, Ch. 41, L. 1963.

66-2705. Employees of board. The board may employ whatever temporary or permanent personnel are necessary to carry out the provisions of this act.

History: En. Sec. 5, Ch. 41, L. 1963.

66-2706. Disposition of fees. All moneys collected by the board shall be deposited with the state treasury and shall be used only for the purposes of defraying the necessary expenses of administering this act.

History: En. Sec. 6, Ch. 41, L. 1963.

66-2707. Funeral directing. The practice of funeral directing is prohibited by anyone who does not hold a funeral director's license or a mortician's license issued by the board. A person licensed to practice funeral directing on June 1, 1963 is entitled to an annual renewal of his license upon payment of an annual license fee to the board on July 1 of each year. The amount of the annual license fee shall be set by the board but shall not exceed five dollars ($5). A funeral director's license shall not be issued to a person who is not licensed by the board of embalmers and funeral directors to practice funeral directing on June 1, 1963.

History: En. Sec. 7, Ch. 41, L. 1963.

66-2708. Embalming and mortuary science—qualifications for mortician's license. The practice of embalming or mortuary science is prohibited by anyone who does not hold a mortician's license issued by the board. To qualify for a mortician's license a person must

(1) Be at least twenty-one (21) years of age.

(2) Be of good moral character.

(3) Have graduated from an accredited college of mortuary science, and have satisfactorily completed two (2) academic years at an accredited college or university. This subsection shall not apply to a person who is enrolled in an accredited college of mortuary science on the effective date of this act.

(4) Pass an examination prescribed by the board.

(5) Serve a one (1) year internship under the supervision of a mortician in a licensed mortuary in Montana.

History: En. Sec. 8, Ch. 41, L. 1963.

66-2709. Examination for morticians. A person possessing the necessary qualifications may apply to the board for a license and upon payment of an application fee of twenty-five [dollars] ($25.00), may take the ex-

amination prescribed by the board. The examination shall be held on the second Wednesday of July each year in Helena and at such other times and places as the board deems necessary.

History: En. Sec. 9, Ch. 41, L. 1963.

Compiler's Note

The compiler has inserted the bracketed word "dollars."

66-2710. Intern mortician's license. An applicant who passes the examination, upon payment of a license fee of three dollars ($3.00), shall be granted an intern mortician's license to practice mortuary science under the supervision of a mortician in a licensed mortuary in Montana, and upon completion of one year's internship and payment of the annual license fee, may apply for and receive a mortician's license.

History: En. Sec. 10, Ch. 41, L. 1963.

66-2711. Mortician's license—fee and renewal. (1) The annual license fee for a mortician's license must be in the hands of the secretary-treasurer or postmarked before July 1 of the assessment year. The amount of the annual license fee shall be set by the board but shall not exceed ten dollars ($10.00). A person holding a license issued by the board of embalmers and funeral directors to practice embalming on June 1, 1963 may, within two (2) years of such date, apply for and receive a mortician's license upon payment of the license fee.

(2) Failure to pay the annual license fee shall result in automatic suspension of the license. The license may be reinstated by the payment of all unpaid license fees plus a penalty of twenty-five dollars ($25.00).

History: En. Sec. 11, Ch. 41, L. 1963.

66-2712. Reciprocity. If a person holding a license entitling him to practice mortuary science in another state applies for a Montana mortician's license, the board may waive the examination and internship requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana and if such state has a reciprocal agreement with Montana.

History: En. Sec. 12, Ch. 41, L. 1963.

66-2713. Operation and licensing of mortuaries. (1) An operating mortuary must be licensed by the board. The license must be displayed in a conspicuous place. The board may adopt rules and regulations prescribing reasonable standards for such establishments, including minimum requirements for drainage, ventilation, and instruments, and may inspect the premises of a mortuary establishment to determine if such rules and regulations are complied with. Such inspection or inspections shall be made at the discretion of the board, and may be without notice.

(2) The board may charge the operator an inspection fee to be set at the discretion of the board, but not to exceed twenty-five dollars ($25.00) per year.

(3) A mortuary license may be suspended or revoked upon proof of

(a) noncompliance of board rules or regulations relating to the operation of mortuaries,

(b) violation of any of the laws, rules, or regulations of the state, district, or local board of health governing the disposition of dead human bodies, or,

(c) violation of any rule of the board regulating the practice of mortuary science and funeral directing.

(4) The operation of a mortuary is prohibited by anyone not holding a mortician's or funeral director's license.

History: En. Sec. 13, Ch. 41, L. 1963.

66-2714. Refusal to grant, suspension and revocation of mortician's and funeral director's license. The board may refuse to grant, may suspend, or may revoke a mortician's or funeral director's license for any of the following reasons:

(1) If the applicant or licensee obtained the license by fraud or misrepresentation, either in the application for the license, or in passing the examination.

(2) If the applicant or licensee has been convicted of a felony.

(3) If the applicant or licensee has violated any section of this act or any rule or regulation of the state, district, or local board of health governing the disposition of dead human bodies, or any rule of the board regulating the professions of mortuary science or funeral directing, or the operation of a mortuary.

(4) If the licensee has participated in any scheme in the nature of a burial association or burial certificate plan which does not properly protect the rights of the public, or where there is any element of fraud, or where there is contained any agreement or provision that deprives heirs, next of kin, or any other authorized person freedom of choice as to the services or merchandise used in connection with a funeral, or the freedom of choice as to which funeral directors or morticians shall be employed.

History: En. Sec. 14, Ch. 41, L. 1963.

66-2715. Hearing and notice—revocation and suspension of licenses. No action to suspend, revoke, or cancel a license shall be taken by the board until the accused has been furnished, at least thirty (30) days prior to the date of the hearing, with a statement of the charges against him and notice of the time and place of hearing the charges. If, upon the hearing, the board finds the charges true, it may revoke or suspend the license of the accused person. A stenographic report of each proceeding to revoke or suspend the license shall be made at the expense of the board and a transcript kept in its files. A copy of the transcript shall be furnished to the person so charged and accused.

History: En. Sec. 15, Ch. 41, L. 1963.

66-2716. Appeal. A person who has been refused a license or whose license has been revoked or suspended, may file with the secretary of the board, within thirty (30) days after the decision of the board, a written notice of appeal to any district court of the state of Montana. The court

is limited in its proceedings to a determination of whether the action of the board was in accord or consistent with this act or the constitution of this state, or whether the action of the board was arbitrary or an abuse of discretion. When a notice of appeal is filed the secretary of the board shall transmit to the clerk of the court the record of the board's proceedings. The judgment of a district court of the state of Montana, may, in the manner provided for appeal of civil action, be reviewed upon proceedings on appeal in the supreme court.

History: En. Sec. 16, Ch. 41, L. 1963.

66-2717. Penalty provision. A person who violates this act is guilty of a misdemeanor.

History: En. Sec. 17, Ch. 41, L. 1963.

CHAPTER 28—ELECTRICAL SAFETY LAW

Section 66-2801. Short title.
66-2802. Purpose.
66-2803. Definitions.
66-2804. State electrical board.
66-2805. Oath—meetings—powers.
66-2806. Electrician must have license.
66-2807. License requirements.
66-2808. Unauthorized use of title.
66-2809. License to nonresidents—reciprocity.
66-2810. Temporary permits.
66-2811. License without written examination.
66-2812. Exemptions.
66-2813. Appeals.
66-2814. Fees.
66-2815. Examination fees.
66-2816. Licensing of those presently qualified.
66-2817. Apprentices—rules and regulations—record kept by state board.
66-2818. Municipal ordinances for electrical standards—authority.
66-2819. Disposition of fees.
66-2820. Violations—penalty.

66-2801. Short title. This act is to be known and referred to as the Electrical Safety Law.

History: En. Sec. 1, Ch. 148, L. 1965.

Title of Act

An act defining master electricians, journeyman electricians, and electrical contractors, and setting forth the qualifications, examination and licensing of each; adopting a code of standards; providing for certain exceptions; establishing a state electrical board; providing for appointment of state electrical inspectors; providing for the issuance of licenses and temporary permits and inspection fees; providing for license examination; providing for disposition of fees; providing a penalty; repealing sections 16-1180 and 16-1181; and providing an effective date.

66-2802. Purpose. The purpose of this act is to protect the health and safety of the people of Montana from the danger of electrically caused shocks, fires and explosions and to protect property from the hazard of electrically caused fires and explosions, and to establish a procedure for determining where and by whom electrical installations are to be made and to assure the public that persons making electrical installations are qualified, and that the electrical installations and electrical products made and sold within this state meet minimum safety standards. From and

after the taking effect of this act, all installations in the state of Montana of wires and equipment to convey electric current and installations of apparatus to be operated by such current, except as hereinafter provided, shall be made substantially in accord with the National Electrical Code, as approved by the American standards association, relating to such work as far as the same covers both fire and personal injury hazards, and as the National Electrical Code shall be amended, revised, compiled and published from time to time and as such amendments or revisions are adopted by the board.

History: En. Sec. 2, Ch. 148, L. 1965.

66-2803. Definitions. (a) The term "master electrician" means a person having the necessary qualifications, training, experience and technical knowledge to properly plan, lay out and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, power, and other purposes in accordance with standard rules and regulations governing such work.

(b) The term "journeyman electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes, in accordance with standard rules and regulations governing such work.

(c) The term "electrical contractor" means any person, firm, copartnership, corporation, association, or combination thereof, who undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power. A registered electrical engineer who plans or designs electrical installations shall not be classed as an electrical contractor.

History: En. Sec. 3, Ch. 148, L. 1965.

66-2804. State electrical board. There is hereby established a state electrical board which shall consist of three members, appointed by the governor, with the consent of the senate, who shall be residents of the state of Montana. One of said members shall be an electrical contractor, one shall be a journeyman electrician, and one shall be appointed from the public at large. The original members of the board shall be appointed within twenty (20) days after the effective date of this act for one (1), two (2), and three (3) years, respectively, as determined by the governor, and all appointments thereafter shall be for a term of three (3) years. Any vacancy occurring in the membership of the board shall be filled by the governor by appointment for the unexpired term of such member. Each member of the board shall receive the actual and necessary expenses incurred in the performance of his duties, all to be paid out of the electricians' fund herein created.

History: En. Sec. 4, Ch. 148, L. 1965.

66-2805. Oath—meetings—powers. (a) Each member of the board, before entering on the discharge of his duties, and within thirty (30) days

from the effective date of his appointment, shall subscribe to an oath for the faithful performance of duty before any officer authorized to administer oaths in this state and shall file the same with the secretary of state.

(b) The board shall, within thirty (30) days after July 1, 1965, and annually thereafter in the month of July, elect from the membership thereof a president, vice-president and a secretary-treasurer. The board shall meet quarterly and at such other times as it shall deem necessary.

(c) The board is authorized and empowered to:

(i) Prescribe, amend and enforce rules and regulations consistent with this act for the administration of this act and to effectuate the purposes thereof, and for the licensing of electrical contractors and the examination and licensing of journeymen electricians, and to make inspections of electrical installations, and to issue inspection tags covering such installations, and to establish and charge a reasonable and uniform schedule of fees therefor, which shall not exceed the expenses of providing such inspection service. Individuals, firms, co-operatives, corporations, or municipalities selling electricity hereinafter known as a power supplier, shall not connect with or energize any electrical installation, coming under the provisions of this act, unless the owner or a licensed electrical contractor has delivered to the power supplier an inspection tag, issued by the board except in cities or towns that have no inspection facilities, covering the installation to be energized. Immediately after an installation has been energized, the power supplier shall deliver to the board or its authorized agent, the inspection tag covering such installation except in cities or towns having no inspection facilities. It shall be unlawful for any person, partnership, company, firm, association or corporation other than a power supplier, to energize any electrical installation coming under the provisions of this act unless an application for an electrical inspection tag, covering such installation, together with the inspection fee herein provided, has been forwarded to the board except in cities or towns having no inspection facilities:

(ii) Adopt a seal, and the secretary shall have the care and custody thereof;

(iii) Examine, license, and renew the licenses of duly qualified applicants for electrical contractor, journeyman electrician or master electrician as provided in this article;

(iv) Cause the prosecution and enjoinder of all persons violating this article and incur necessary expenses therefor;

(v) Employ such technical, clerical, or other assistance as is necessary for the proper performance of its work.

History: En. Sec. 5, Ch. 148, L. 1965.

66-2806. Electrician must have license. No person shall engage in or work at the business, trade, or calling of electrical contractor, journeyman electrician or master electrician in this state, until he shall have received

from the state electrical board and [a] license or permit to work as an electrical contractor, journeyman electrician or master electrician.

History: En. Sec. 6, Ch. 148, L. 1965.

Compiler's Note

The compiler has inserted the bracketed word "a."

66-2807. License requirements. (a) An applicant for a master electrician's license shall furnish written evidence that he is a graduate electrical engineer of an accredited college or university and has one year of practical electrical experience, or that he is a graduate of an electrical trade school and has at least four years of practical experience in electrical work, or that he has had at least five years' practical experience in planning, laying out, supervising, or installing wiring, apparatus, or equipment for electrical light, heat, and power. Applicants for license as a master electrician shall file an application on forms prepared and furnished by the state electrical board, together with the examination fee. The board shall, not less than thirty days prior to a scheduled written examination, notify each applicant that the evidence submitted with his application is sufficient to qualify him to take such written examination or that such evidence is insufficient and is rejected and in the event the application is rejected the board shall set forth the reasons therefor in the notice to the applicant, and shall forthwith return such applicant's examination fee. The place of examinations shall be designated in advance by the board and examinations shall be held not less often than once a year and at such other times as, in the opinion of the board, the number of applicants warrants.

(b) The written examination shall consist of at least thirty (30) questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

(i) The National Electrical Code;

(ii) Cost estimating for electrical installments;

(iii) Procurement and handling of materials needed for electrical installations and repair;

(iv) Reading of blueprints for electrical work;

(v) Drafting and layout of electrical circuits;

(vi) Knowledge of practical electrical theory.

(c) An applicant for a journeyman electrician's license shall furnish written evidence that he has had at least four (4) years apprenticeship in the electrical trade or four (4) years practical experience in the wiring for, installing, and repairing electrical apparatus and equipment for light, heat, and power. Applications for license and notice to the applicant shall be made and given as provided for in the case of master electricians' licenses

(d) The written examination for a journeyman's license shall consist of at least thirty (30) questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

(i) The Ohms law;

(ii) The National Electrical Code;

(iii) Layout and practical installation of electrical circuits.

(e) To insure impartiality, the examination shall be by numbers which shall be drawn by lot, and no paper shall be marked in the name of any applicant but shall be anonymously graded by the board. The examination passing grade shall be seventy-five per cent (75 %) of perfection. If it shall be determined that the applicant has passed the examination, the secretary, upon payment by the applicant of the fee, shall issue to the applicant a license which shall authorize him to engage in the business, trade, or calling of a journeyman electrician or master electrician. Each such original license shall by its terms expire on the fifteenth day of July which is at least one (1) year but not more than two (2) years subsequent to the date of issuance.

(f) All licenses of journeyman electricians or master electricians, unless such licenses have been suspended or revoked by the board, shall be renewed for a period of one (1) year by the board upon application for such renewal being made to the board prior to the fifteenth day of July of the year in which the prior license expired and upon the payment of an annual renewal fee. If application for renewal is not made prior to said fifteenth day of July, an additional fee of five dollars ($5) shall be paid on account of such delinquency in renewal; but all such applications for renewal must be made prior to the fifteenth day of August of that year, otherwise the license shall be forfeited, and such applicant shall be required to pass the examination and pay the fees required of applicants for original licenses.

History: En. Sec. 7, Ch. 148, L. 1965.

66-2808. Unauthorized use of title. No person, firm, partnership, corporation or association shall assume or use the title or designation of licensed master electrician or licensed journeyman electrician unless qualified and licensed under this act.

History: En. Sec. 8, Ch. 148, L. 1965.

66-2809. License to nonresidents — reciprocity. To the extent that other states which provide for the licensing of electricians provide for similar action, the state electrical board may grant licenses to electricians licensed by such other states, upon payment by the applicant of the required fee and upon furnishing proof to the board that the applicant has qualifications at least equal to those provided herein for applicants for written examinations. Applicants who qualify for a license under this section are not required to take a written examination.

History: En. Sec. 9, Ch. 148, L. 1965.

66-2810. Temporary permits. The state electrical board may issue temporary permits to engage in the work of a master electrician or journeyman electrician to any applicant who furnishes evidence satisfactory to the board that he has the required experience to qualify for the examination provided in this article and who pays the fee. Temporary permits shall continue in effect only until the next examination is given and may be revoked by the board at any time. If the applicant is granted a license,

any fee paid for the temporary permit shall be applied to the fee required for a license.

History: En. Sec. 10, Ch. 148, L. 1965.

66-2811. License without written examination. The state electrical board may issue a license as a master electrician or journeyman electrician to any applicant without written examination upon satisfactory proof that said applicant has the qualifications to apply for a license under this act and is the holder of a valid license issued by any city or other political subdivision of the state providing for the examination and licensing of electricians.

History: En. Sec. 11, Ch. 148, L. 1965.

66-2812. Exemptions. (a) Nothing in this act shall be deemed to apply to the installation or maintenance of communication circuits, wires and apparatus; nor to any electrical public utility, or its employees, in the installation and maintenance of electrical wiring, circuits, apparatus and equipment by or for such public utility, or comprising a part of its plants, lines or system. The licensing provisions of this act shall not apply to persons making electrical installations on their own property or to regularly employed maintenance electricians working on the premises of their employer.

(b) Nothing in the article shall be construed to require any individual to hold a license before doing electrical work on his own property.

(c) Any person may work as an apprentice to a licensed electrician but shall not do any electrical wiring for or installation of electrical apparatus or equipment for light, heat, or power, except with and under the direct supervision of a licensed electrician.

(d) An individual, firm, copartnership, or corporation may engage in business as an electrical contractor without an electrician's license if all electrical work performed by such individual, firm, copartnership, or corporation is under the direction and control of a licensed master electrician.

(e) Any person who plugs in an electrical appliance where approved electrical outlet is already installed shall not be considered as an installer.

(f) No provisions of this article shall in any manner interfere with, hamper, preclude or prohibit any vendor of any electrical appliance, from selling, delivering and connecting any electrical appliance, if the connection of said appliance does not necessitate the installation of electrical wiring of the structure where said appliance is connected.

History: En. Sec. 12, Ch. 148, L. 1965.

66-2813. Appeals. Any person aggrieved by a decision of the board, and affected thereby, shall be entitled to judicial review by filing in the district court of the county of his residence or in the district court of the county of Lewis and Clark, within ninety (90) days after the decision of the board, an action requesting such review. Review shall be by trial as in other civil cases, de novo.

History: En. Sec. 13, Ch. 148, L. 1965.

66-2814. Fees. Each electrical contractor shall, on or before the first day of July of each year, file with the state electrical board an application in writing for each firm operated by him in Montana to obtain a license therefor. No license shall be issued until the applicant meets the requirements and has paid to the state electrical board a license fee of seventy-five dollars ($75) for each firm operated by him. All licenses shall bear the date of issue and shall expire on the first day of July next following the date of issue. Every electrical contractor licensed under the provisions of this act shall be entitled to have his license renewed for the ensuing year, upon the expiration of his license, by the payment to the state electrical board of a fee of seventy-five dollars ($75) on or before the date of expiration of such license.

History: En. Sec. 14, Ch. 148, L. 1965.

66-2815. Examination fees. (a) All master electricians not being electrical contractors and all journeyman electricians performing work or intending to perform work for hire of installing electric wiring or equipment to convey electric current, or installing apparatus to be operated by such current, shall, within sixty (60) days after the first day of July, 1965, make application for a license to the state electrical board. The application shall be on a form furnished by the state electrical board and be accompanied by an examination fee of ten dollars ($10). The forms shall state the applicant's full name, his address, the extent of his experience, and such other information as may be required by the state electrical board. Upon applicant's complying with the rules and requirements promulgated by the state electrical board and, being qualified, successfully completes the examination, he shall pay to the state electrical board an annual license fee of twenty-five dollars ($25) for a master electrician's license; ten dollars ($10) for a journeyman electrician's license, and upon receipt thereof, he shall be issued the proper license by said board. Any person serving a four (4) year electrician apprenticeship under the supervision of a licensed electrician shall be exempt from the licensing provision of this paragraph during training. Provided, however, that credit for the time spent in any electrical school shall be given to the master electrician, journeyman electrician or apprentice for the time spent in said classes, up to a total of two (2) years on the aforementioned four (4) year requirement.

History: En. Sec. 15, Ch. 148, L. 1965.

66-2816. Licensing of those presently qualified. Montana resident electricians who, prior to July 1, 1967 have had at least four (4) years practical experience in installing electric wires and equipment covered by the National Electrical Code shall not be required to take the examination, but shall be issued a license by the board upon payment of the proper license fee and furnishing of proof satisfactory to the board of such four (4) years' experience; provided, such application is made within sixty (60) days after July 1, 1967. All Montana resident contractors doing business on the effective date of this act shall be qualified

to receive said license if application is made within the time provided herein.

History: En. Sec. 16, Ch. 148, L. 1965; amd. Sec. 1, Ch. 199, L. 1967.

Amendments

The 1967 amendment substituted "July 1, 1967" for "the effective date of this act" after "prior to" at the beginning of this section; and substituted "1967" for "1965" after "days after July 1" at the end of the first sentence.

Effective Date

Section 2 of Ch. 199, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 28, 1967.

66-2817. Apprentices—rules and regulations—record kept by state board. Nothing in this act shall prohibit any person from working as an apprentice in said trade of electrician with an electrician duly licensed by said board as herein provided for, and under such rules and regulations as may be prescribed from time to time by the state electrical board; provided, the name and residence of each apprentice, and the names and residences of their employers, shall be duly filed with said board, and a record shall be kept by said board, showing the names and residences of such apprentices.

History: En. Sec. 17, Ch. 148, L. 1965.

66-2818. Municipal ordinances for electrical standards—authority. Any municipality of the state of Montana may by ordinance adopt rules and regulations governing electrical installations within its corporate limits, but the standards provided for therein shall not be less nor lower than the minimum standards provided for them in the state electrical code.

History: En. Sec. 18, Ch. 148, L. 1965.

66-2819. Disposition of fees. All moneys received under this act shall be deposited with the state treasurer and credited to an account to be designated by the state treasurer as the proper account for the fund hereby created. No money shall be paid out of said fund except upon voucher drawn against said fund, signed and certified to by the secretary of the board. All funds so credited shall be available to the state electrical board for the payment of salaries and expenses incurred by it in the performance of its duties under this act.

History: En. Sec. 19, Ch. 148, L. 1965.

66-2820. Violations—penalty. Any person or corporation violating any provision of this act shall upon conviction thereof, if a person, be punished by a fine not more than five hundred dollars ($500), or by imprisonment for a term not to exceed six (6) months, or by revocation of his license or by such fine, imprisonment and revocation, in the discretion of the court; and if a corporation, be punished by a fine of not more than one thousand dollars ($1,000). Any officer or agent of a corporation, or member or agent of a copartnership or association, who shall personally participate in or be accessory to any violation of this act by such copartnership, association, corporation, shall be subject to the penalties herein prescribed for individuals.

History: En. Sec. 20, Ch. 148, L. 1965.

Repealing Clause

Section 21 of Ch. 148, Laws 1965 repealed sections 16-1180 and 16-1181 and all acts and parts of acts in conflict with Ch. 148.

Effective Date

Section 22 of Ch. 148, Laws 1965 read "This act shall be in full force and effect from and after the 1st day of July, 1965."

CHAPTER 29—MASSEURS—REGULATION AND LICENSING

Section 66-2901. Purpose of act.
66-2902. Definitions.
66-2903. State board of massage examiners—qualifications and appointment.
66-2904. Organization of board—meetings—powers and duties.
66-2905. Practicing without a license—license without examination.
66-2906. Application and fees for license.
66-2907. Examinations.
66-2908. Refusal or revocation of license.
66-2909. Renewal of license.
66-2910. Disposition of fees—receipts and disbursements.
66-2911. Bond of treasurer—dismissal of members of the board.
66-2912. Admission to practice of persons from other states.
66-2913. Penalty for violation of this act.
66-2914. Exemptions.

66-2901. Purpose of act. It is hereby declared, as a matter of legislative policy in the state of Montana, that the occupation of masseur and masseuse should be regulated and licensed for the protection of the interest, health, and welfare of the people of Montana; that it is necessary to authorize and provide authority to a state board to properly protect the patron public against improper, unauthorized and unqualified masseurs and masseuses and to provide standards of sanitation and practice.

History: En. Sec. 1, Ch. 302, L. 1967.

Title of Act

An act providing for the regulation and licensing of the occupation of massage; creating a board, providing qualifications, powers, duties, and compensation; providing for examination and licensing, disposition of receipts and disbursements, and a penalty for violation, and other requirements.

66-2902. Definitions. a. The term masseur shall include all persons engaged in the occupation of massage and the masculine gender includes the feminine "masseuse."

b. Massage shall mean the trained ability of body massage by hands for the purpose of body massage, the use of oil rubs, salt glows, hot and cold packs, tub, shower or cabinet baths; which includes the application to the patron by the operator's hands by variations of touch, stroking, friction, kneading, vibration, percussion, and gymnastics.

c. Massage establishment as used in this act shall mean any place wherein all or any or more of the above defined procedures and methods are administered or used.

d. The term board as used in this act shall mean the Montana board of massage examiners.

History: En. Sec. 2, Ch. 302, L. 1967.

66-2903. State board of massage examiners—qualifications and appointment. There is hereby created and established a board to be known as the state board of massage examiners, and said board shall be composed of

three (3) practicing masseurs of integrity and ability, who shall be residents of the state of Montana, and who shall have been engaged in the occupation of massage continuously in the state of Montana for a period of at least one (1) year. The governor of the state of Montana shall appoint three (3) masseurs, who shall possess the necessary qualifications, to constitute the members of said board, the term of office of one (1) to expire in one (1) year, one (1) in two (2) years, and one (1) in three (3) years from the date of appointment. Annually thereafter, the governor shall appoint one (1) licensed masseur engaged in such occupation and possessed of the qualifications herein set forth, to serve for a period of three (3) years, and shall fill all vacancies in said board caused by death or otherwise as soon as practicable.

History: En. Sec. 3, Ch. 302, L. 1967.

66-2904. Organization of board—meetings—powers and duties. The board of massage examiners shall convene within thirty (30) days after their appointment and elect, and thereafter annually elect, a president, a vice-president, and a secretary-treasurer from their membership.

The board shall hold a regular meeting on the 2nd Friday of January in each year, at the city of Helena, Montana, and shall hold special meetings at such times and places as the board, or a majority of the membership thereof, may designate; provided, that not more than four (4) meetings shall be held in any one (1) year. A majority of the board shall constitute a quorum.

The board shall have authority to administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board. It shall adopt a seal, which shall be affixed to all licenses issued by them, and shall from time to time adopt such rules and regulations as they deem proper and necessary for the performance of their duties, and they shall adopt a schedule of minimum educational requirements, not inconsistent with the provisions of this law, which shall be without prejudice, partiality, or discrimination as to the different schools of massage training. The secretary of said board shall keep a record of the proceedings of the board, which shall at all times be open to public inspection.

A license to engage as a masseur within this state shall be issued to the individual members of said board at the first meeting of said board upon payment of the regular fee as provided for in this act.

History: En. Sec. 4, Ch. 302, L. 1967.

66-2905. Practicing without a license—license without examination. It shall be unlawful for any person to engage in the occupation of massage in this state without first obtaining a license as provided in this act. All persons engaged in the occupation of massage within this state for three (3) months prior to the passage of this law who have completed a course in massage and shall accompany said application with satisfactory evidence of good character and reputation may be licensed without further examination.

When application for examination for license is regularly filed with the board, as provided in this act, the board may issue to the applicant a temporary permit to engage in the occupation of massage, which certificate shall be good until the next meeting of the board.

History: En. Sec. 5, Ch. 302, L. 1967.

66-2906. Application and fees for license. Any person wishing to engage in the occupation of a masseur in this state after August 1, 1967, except those licensed under section 5 [66-2905] of this act, shall make application to said board of massage examiners through the secretary-treasurer thereof, and upon such form and such manner as may be prescribed and directed by the board, at least fifteen (15) days prior to any meeting of said board. Each applicant shall hold a diploma or credentials issued by a recognized, approved school of massage or like institution, certifying not less than one thousand (1,000) hours of study satisfactory to said school. Application shall be made in writing and shall be sworn to by some officer authorized to administer oaths, and shall recite the history of applicant's educational qualifications, how long he has studied massage, from what school he holds a certificate, and the length of time he has engaged in the occupation of massage, accompanying the same with proof thereof by a diploma or certificate and shall accompany said application with satisfactory evidence of good character and reputation.

There shall be paid to the secretary-treasurer of the state board of massage examiners, by each applicant for a license, a fee of thirty-five dollars ($35) which shall accompany the application. Any applicant failing to pass said requirements shall be entitled within six (6) months to a re-examination upon payment of an additional fee of ten dollars ($10) but upon a third failure may not reapply.

History: En. Sec. 6, Ch. 302, L. 1967.

66-2907. Examinations. Examinations for licenses to engage in the occupation of massage shall be made by the board according to the method deemed by it to be the most practicable and expeditious to test the applicant's qualifications.

All examinations shall be made in writing, and in addition each applicant shall pass a reasonable demonstrative and oral examination, conducted by and under the supervision and direction of said board. Minimum requirements shall be a general average in said examination of seventy-five per cent (75%) in all subjects involved and not less than fifty per cent (50%) in any one (1) subject. In addition to such subjects as may be designated by the board, the examination shall include principles of sanitation and hygiene.

History: En. Sec. 7, Ch. 302, L. 1967.

66-2908. Refusal or revocation of license. The state board of massage examiners may, after due hearing, refuse to grant, revoke or renew any license provided for in this act to a person, otherwise qualified, who obtained said license by fraudulent representation, for incompetency in

practice, for use of untruthful or improbable statements to patrons or in his advertisements, for habitual intoxication or for unprofessional and immoral conduct, but said board may reissue a license after a lapse of not less than six (6) months, if in its judgment such act or acts and/or conditions of disqualification shall have been remedied. It shall be a violation of this act for any person engaged in the occupation of a masseur to advertise or assert as a licensee under this act that they diagnose or treat any disease, injury or illness.

History: En. Sec. 8, Ch. 302, L. 1967.

66-2909. Renewal of license. Each license shall expire on the last day of December in each year and shall be renewed then or thereafter, by the board, upon payment of a renewal fee of not less than ten dollars ($10) or more than twenty-five dollars ($25) as set by the state board of massage examiners.

History: En. Sec. 9, Ch. 302, L. 1967.

66-2910. Disposition of fees—receipts and disbursements. All examination and renewal fees received by the state board of massage examiners under this act shall be paid to the secretary-treasurer of said board, who shall at the end of each month deposit the same with the state treasurer, and the state treasurer shall place all money so received in an account in the earmarked revenue fund to the credit of the state board of massage examiners and shall pay the same out in warrants drawn by the state auditor, upon approved vouchers issued and signed by the president and secretary-treasurer of said board. All money so received and placed in said fund may be used by the state board of massage examiners in defraying their expenses in carrying out the provisions of this act.

The secretary-treasurer shall keep a true and accurate account of all funds received and all vouchers issued by the board; and on the first day of December of each year, shall file with the governor of the state a report of all receipts and disbursements and the proceedings of said board for the fiscal year.

The members of said board shall receive a per diem of fifteen dollars ($15) for each day during which they shall be actually engaged in the discharge of their duties, and mileage at the rate of ten cents (10¢) per mile for each mile necessarily traveled in going to and from any meeting of said board.

Per diem and mileage and all other expenses necessarily connected with said board shall be paid only out of the earmarked revenue fund of the state board of massage examiners.

History: En. Sec. 10, Ch. 302, L. 1967.

66-2911. Bond of treasurer—dismissal of members of the board. The treasurer of said board shall give bond in such sum and with such sureties as the board may deem proper. Upon sufficient proof to the governor of the inability or misconduct of a member of the board, said member shall be dismissed, and the governor shall appoint as his successor some licensed masseur of this state.

History: En. Sec. 11, Ch. 302, L. 1967.

66-2912. Admission to practice of persons from other states. Persons licensed to engage in the occupation of a masseur under the laws of any other state having equal requirements to this act, may, in the discretion of the board, be issued a license to engage in the occupation of a masseur in this state without examination, upon payment of the fee of thirty-five dollars ($35) as herein provided.

History: En. Sec. 12, Ch. 302, L. 1967.

66-2913. Penalty for violation of this act. Any person who shall engage in the practice of body massage as a masseur, or shall accept compensation for performing body massage as a masseur, without first having complied with the provisions of this act, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than two hundred dollars ($200) or more than five hundred dollars ($500), or by imprisonment in the county jail for not less than thirty (30) days or more than six (6) months, or by both such fine and imprisonment. The district court shall have jurisdiction of all prosecutions brought hereunder.

History: En. Sec. 13, Ch. 302, L. 1967.

66-2914. Exemptions. The following classes of persons are exempt from this act:

1. Persons authorized by the laws of this state to practice medicine, surgery, osteopathy, chiropractic or chiropody.

2. Persons who are registered or licensed under the laws of this state as nurses, practical nurses, physical therapists, barbers or cosmetologists.

3. Schools, Y.M.C.A. clubs, athletic clubs, and similar organizations who furnish massage to their players and members.

History: En. Sec. 14, Ch. 302, L. 1967.

TITLE 67—PROPERTY

Chapter 8. Obligations incidental to the ownership of real property—monuments and fences, 67-808, 67-809.
13. Acquisition of property by accession—fixtures—islands, etc., 67-1301.
14. Acquisition of personal property by accession—union of parts, 67-1410.
16. Transfer of real property—method and effect, 67-1602.1.
17. Transfer of personal property—modes of transfer, 67-1706.1.
18. Uniform Gifts to Minors Act, 67-1801 to 67-1804, 67-1806, 67-1807, 67-1810, 67-1811.
19. Principal and Income Act, 67-1912.
20. Surveys and co-ordinates, 67-2001 to 67-2019.
21. Sale or lease of subdivided lands, 67-2101 to 67-2116.
22. Disposition of unclaimed property, 67-2201 to 67-2230.
23. Unit Ownership Act, 67-2301 to 67-2342.

CHAPTER 1—GENERAL RIGHTS OF STATE OVER PROPERTY

67-103. (29) Acquisition by taxation.

References

Helena Gun Club v. Lewis and Clark County, 141 M 490, 379 P 2d 436.

CHAPTER 2—DEFINITIONS AND NATURE OF PROPERTY

67-201. (6663) Property, what constitutes.

References

Cited in State ex rel. Burns v. City of Livingston, 144 M 248, 395 P 2d 971, 973.

67-209. (6669) Fixtures.

Attachment to Realty

Where tenant built a small apartment attached to rented premises with the intention that it be permanent and without an agreement with the lessor that he would be allowed to remove any of the items which went into the construction and where the improvement was so attached that removal injured the premises, the property and chattels used in building the apartment became fixtures as a matter of law and lessor who removed them after tenant left the premises was not guilty of conversion. Sanders v. Butte Motor Co., 142 M 524, 385 P 2d 263.

References

Benson & Bissell v. Wiseman, 145 M 429, 401 P 2d 78.

67-210. (6670) Fixtures attached to mines.

Mining Equipment

Grantee under tax deed of patented lode claim became owner of a mill and machinery used in mining both patented and unpatented mining claims as they were fixtures within the meaning of this section and therefore a part of the patented claim, although located on adjacent land, since use of the mill by the former owner showed intent that it be attached. Benson & Bissell v. Wiseman, 145 M 429, 401 P 2d 78.

67-211. (6671) Appurtenances.

Conveyance of Appurtenant Water Rights

In the absence of a reservation by the grantor, water rights appurtenant to a divided tract are proportioned to each division, and the share received by each division is determined by the ratio of number of irrigated acres to the total number of irrigated acres irrigated by the water. Spaeth v. Emmett, 142 M 231, 383 P 2d 812.

CHAPTER 3—OWNERSHIP OF PROPERTY AND INTERESTS THEREIN

67-307. (6679) Ownership of several persons.

References

Clark v. Clark, 143 M 183, 387 P 2d 907.

67-308. (6680) Joint interest defined.

Contract for Sale of Real Estate

Testatrix, sole owner of real estate, entered into a contract for the sale of the property, her husband joining in the execution of the contract. This contract, after setting forth the terms of payment, specified that all payments were to be made at a designated bank to credit of testatrix and her husband and that payments be deposited by said bank in an account subject to draft by testatrix and her husband or either of them or their survivor. This provision did not by itself operate to create a joint tenancy in the interest of the property being conveyed. The contract for the sale of the property not containing an express declaration establishing a joint tenancy in the property being sold thereunder as required by this section, the vendor's interest in the contract of sale passed into the estate of the testatrix under section 67-313 and her husband became the owner of the vendor's interest for life as provided in the will of testatrix and upon the death of the husband the vendor's interest passed to the residuary legatee of testatrix. Moxley v. Vaughn, — M —, 416 P 2d 536, 539.

Estates by Entirety

While a joint tenancy is a joint interest, a joint interest is not limited to the estate of joint tenancy but may include estates by entirety; however, estates by the entirety are no longer a permissible mode of property ownership in this state, and where husband and wife took under a deed to them "as joint tenants with right of survivorship and not as tenants in common" the property was held in a joint tenancy and this was not converted by divorce into a tenancy in common. Clark v. Clark, 143 M 183, 387 P 2d 907.

Ownership of Cattle

Although under this section and section 46-606 prima facie owners of the recorded brand have the same interest in the cattle bearing their brand as shown in brand record, joint ownership of the cattle may be contradicted and overcome by other evidence under 93-301-11. Marshall v. Minlschmidt, — M —, 419 P 2d 486, 490.

In action by administrator of estate of deceased partner against surviving partners to recover assets transferred by deceased during his last illness, evidence that deceased had a half interest in partnership cattle and failure of defendants to produce any of the partnership records at the trial in the lower court, sustained finding that heir of deceased had overcome the prima facie showing of one-third interest in the partnership cattle arising from the recording of the brand in name of three persons. Marshall v. Minlschmidt, — M —, 419 P 2d 486, 491.

Shares of Stock

Stocks issued in the names of deceased and his children as joint tenants with the right of survivorship and not as tenants in common, deposited in safety deposit boxes rented in the names of the owners who had inspected the stock in the safety deposit boxes and included dividends from stocks in individual income tax returns, were delivered by the donor to the donees and did not belong to deceased at the time of his death so as to be a part of his estate. Marans v. Newland, 141 M 32, 374 P 2d 721, 735.

References

McReynolds v. McReynolds, — M —, 414 P 2d 531.

67-310. Right of survivorship in certain conveyances recognized.

Estates by Entirety

While a joint tenancy is a joint interest, a joint interest is not limited to the estate of joint tenancy but may include estates by entirety; however, estates by the entirety are no longer a permissible mode of property ownership in this state, and where husband and wife took under a deed to them "as joint tenants with right of survivorship and not as tenants in common" the property was held in a joint tenancy and this was not converted by divorce into a tenancy in common. Clark v. Clark, 143 M 183, 387 P 2d 907.

Exception to Right of Survivorship

Where husband and wife owned realty jointly, and husband feloniously killed his wife, he did not acquire her share by right of survivorship but took the prop-

erty under a constructive trust, and when he thereafter committed suicide his heirs had no right to wife's share. In re Cox' Estate, 141 M 583, 380 P 2d 584.

67-313. (6683) What interests are in common.

Contract for Sale of Real Estate

Testatrix, sole owner of real estate, entered into a contract for the sale of that property, her husband joining in the execution of the contract. This contract, after setting forth the terms of payment, specified that all payments were to be made at a designated bank to credit of testatrix and her husband and that payments be deposited by said bank in an account subject to draft by testatrix and her husband or either of them or their survivor. This provision did not operate by itself to create a joint tenancy in the interest in the property being conveyed. The contract for the sale of the property containing no express declaration establishing a joint tenancy in the property as required by section 67-308, the vendor's interest in the contract of sale passed into the estate of the testatrix, and her husband became the owner of the vendor's interest for life as provided in will of testatrix and upon the death of the husband the vendor's interest passed to the residuary legatee of testatrix. Moxley v. Vaughn, — M —, 416 P 2d 536, 539.

References

Clark v. Clark, 143 M 183, 387 P 2d 907.

CHAPTER 4—CONDITIONS AND LIMITATIONS OF OWNERSHIP

67-406. (6705) How long it may be suspended.

NOTE.—Uniform State Law. Section 67-406(b) constitutes the "Model Rule against Perpetuities Act" approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1944, and adopted in substance in California and Wyoming.

CHAPTER 5—REAL PROPERTY AND ESTATES THEREIN

67-525. (6746) Re-entry—when and how to be made.

References

United States v. Olsen, 245 F Supp 641.

CHAPTER 6—SERVITUDES

67-601. (6749) Servitudes attached to land.

Ditch Right of Way

A ditch right is an easement under subsection 11 of this section. Hughes v. King, 142 M 227, 383 P 2d 816.

In an action for a ditch easement, where defendant showed no actual right to the easement, the district court erred in granting it merely because in doing so the damage done to plaintiff's property would be less than that done to the property of the defendant should the easement be denied. Colarchik v. Watkins, 144 M 17, 393 P 2d 786.

67-606. (6754) Extent of servitudes.

References

Thisted v. Country Club Tower Corp., 146 M 87, 405 P 2d 432.

67-609. (6757) Actions by owner and occupant of dominant tenement.

References

Hughes v. King, 142 M 227, 383 P 2d 816.

CHAPTER 7—RIGHTS INCIDENTAL TO OWNERSHIP OF REAL PROPERTY

67-706. (6765) Rights of lessees and their assignees, etc.

Waiver of Restrictions

A restriction in a lease against assignment by the lessee without written approval of the lessor is for the benefit of the lessor and may be waived by accepting rent from the assignee and permitting him to remain in possession. Kintner v. Harr, 146 M 461, 408 P 2d 487.

67-712. (6771) Boundaries by water.

Avulsive Change

Where stream channel, intended to serve as boundary, moved one-quarter mile in less than 100 years, such movement was "perceptible" and therefore avulsive. McCafferty v. Young, 144 M 385, 397 P 2d 96.

References

Montgomery v. Gehring, 145 M 278, 400 P 2d 403.

67-713. (6772) Boundaries by ways.

References

Montgomery v. Gehring, 145 M 278, 400 P 2d 403.

CHAPTER 8—OBLIGATIONS INCIDENTAL TO THE OWNERSHIP OF REAL PROPERTY—MONUMENTS AND FENCES

Section 67-808. Restriction on liability to gratuitous licensee for recreation.
67-809. Recreational purposes defined.

67-802. (6777) Monuments and fences.

Division Fence

A party wishing to build a fence on a boundary line may do so without the consent of the other party, although the other party, when he decides to inclose his land, is obligated to pay his share of the cost of erecting and maintaining the fence. Montgomery v. Gehring, 145 M 278, 400 P 2d 403.

67-803. (6778) Partition fences.

Effect of Natural Barriers

Trial court's allowing plaintiff to fence land fifteen feet on other side of boundary line because of natural obstacles was erroneous, since, where a stream, bluff, or other obstacle is encountered, the fence should be either discontinued or moved to the very edge of land around the obstacle, in fairness to the interests of both parties. Montgomery v. Gehring, 145 M 278, 400 P 2d 403.

References

Hidden Hollow Ranch v. Collins, 146 M 321, 406 P 2d 365.

67-807. (6782) Repairs of partition fences.

Venue

Since the liability imposed by this section is a penalty, under section 93-2902 venue lies where the cause of action arose and not where the defendant resides. Hidden Hollow Ranch v. Collins, 146 M 321, 406 P 2d 365.

67-808. Restriction on liability to gratuitous licensee for recreation. A landowner or tenant who permits by act or implication, any person to enter upon any property in the possession or under the control of such landowner or tenant for any recreational purpose without accepting a valuable consideration therefor, does not by granting such permission, extend any assurance that such property is safe for any purpose, nor confer upon such a person the status of invitee or licensee to whom any

duty of care is owed, and such landowner or tenant, shall not be liable to such person for any injury to person or property resulting from any act or omission of such landowner or tenant, unless such act or omission constitutes willful or wanton misconduct.

History: En. Sec. 1, Ch. 138, L. 1965.

Title of Act

An act limiting the liability of a landowner or tenant to persons permitted to enter lands for recreational purposes, and defining recreational purposes.

67-809. Recreational purposes defined. Recreational purposes as used herein shall include hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, winter sports, hiking or other pleasure expeditions.

History: En. Sec. 2, Ch. 138, L. 1965.

CHAPTER 12—ACQUISITION OF PROPERTY BY OCCUPANCY

67-1203. (6818) Prescription.

Easement by Prescription

Title to an easement acquired by prescription is as effective as though evidenced by a deed. Scott v. Weinheimer, 140 M 554, 374 P 2d 91, 94.

To establish the existence of an easement by prescription, the party so claiming must show open, notorious, exclusive, adverse, continuous and uninterrupted use of the easement claimed for the full statutory period. Scott v. Weinheimer, 140 M 554, 374 P 2d 91, 95.

Plaintiffs, who acquired prescriptive easement in road across property of defendants by use for thirty-five years before defendants acquired title to the land and attempted to obstruct use, were entitled to enjoin defendants from interfering with use of right of way over road. Scott v. Weinheimer, 140 M 554, 374 P 2d 91, 96.

Highway Established by Prescription

Where county adversely paved and maintained a highway over the land of a private party for a period of more than ten years, the county acquired an easement by prescription over the land even though the private owner was assessed for and paid taxes on the property during the running of the statutory period. Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

Water Rights

Defendants failed to establish a prescriptive water right regardless of priority of rights, where depositions which were self-serving declarations were not admissible as ancient documents or public records as exceptions to hearsay rule and no other satisfactory proof of possession or use of the water was shown. King v. Schultz, 141 M 94, 375 P 2d 108, 110.

References

Rhodes v. Weigand, 145 M 542, 402 P 2d 588.

CHAPTER 13—ACQUISITION OF PROPERTY BY ACCESSION—FIXTURES —ISLANDS, ETC.

Section 67-1301. Fixtures.

67-1301. (6819) Fixtures. When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as provided in section 67-1307 and in the Uniform Commercial Code, belongs to the owner of the land, unless he chooses to require the former to remove it. [Effective January 1, 1965.]

History: En. Sec. 1400, Civ. C. 1895; re-en. Sec. 4572, Rev. C. 1907; re-en. Sec. 6819, R. C. M. 1921; amd. Sec. 11-146, Ch. 264, L. 1963. Cal. Civ. C. Sec. 1013. Based on Field Civ. C. Sec. 442.

Amendment

The 1963 amendment inserted "and in the Uniform Commercial Code."

Attachment to Realty

Where tenant built a small apartment attached to rented premises with the intention that it be permanent and without an agreement with the lessor that he would be allowed to remove any of the items which went into the construction and where the improvement was so attached that removal injured the premises, the property and chattels used in building the apartment became fixtures as a matter of law and lessor who removed them after tenant left the premises was not guilty of conversion. Sanders v. Butte Motor Co., 142 M 524, 385 P 2d 263.

67-1303. (6821) Sudden removal of bank.

References

Cited in McCafferty v. Young, 144 M 385, 397 P 2d 96.

67-1307. (6825) Fixtures—removal of by tenant.

Manner of Attachment

Where tenant built a small apartment attached to rented premises with the intention that it be permanent and without an agreement with the lessor that he would be allowed to remove any of the items which went into the construction and where the apartment was so attached that removal injured the premises, the property and chattels used in building the apartment became fixtures as a matter of law and lessor who removed them after tenant left the premises was not guilty of conversion. Sanders v. Butte Motor Co., 142 M 524, 385 P 2d 263.

CHAPTER 14—ACQUISITION OF PERSONAL PROPERTY BY ACCESSION —UNION OF PARTS

Section 67-1410. Uniform Commercial Code—applicability.

67-1410. Uniform Commercial Code—applicability. The provisions of this chapter apply only to the extent not otherwise provided for in the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. 67-1410 by Sec. 11-147, Ch. 264, L. 1963.

CHAPTER 15—ACQUISITION OF PROPERTY BY TRANSFER—GRANTS AND THEIR INTERPRETATION

67-1518. (6852) Interpretation against grantor.

References

McReynolds v. McReynolds, — M —, 414 P 2d 531.

CHAPTER 16—TRANSFER OF REAL PROPERTY—METHOD AND EFFECT

Section 67-1602.1. Joint tenancy created by direct conveyance.

67-1601. (6859) Requisites for transfer of certain estates.

Conveyance Required for Trade or Exchange

An agreement whereby lessee sold his liquor license for $9,000 plus a promise by the buyer that he would assume the lease on property in which lessee conducted his cafe satisfied the requirements of this section in that the agreement was in writing and signed by the lessee. Kintner v. Harr, 146 M 461, 408 P 2d 487.

67-1602.1. Joint tenancy created by direct conveyance. A joint tenancy as to any interest in real property may be established by the owner thereof, by designating in the instrument of conveyance or transfer, the

names of such joint tenants including his own, without the necessity of any transfer or conveyance to or through a third person.

History: En. Sec. 1, Ch. 208, L. 1963.

Title of Act

An act to provide that a joint tenancy, ownership of property may be established by conveyance or transfer of such property without the necessity of transfer to or through any third person.

67-1607. (6865) What easements pass with property.

Conveyance of Servient Tenement

The doctrine of implied easements by reservation as set forth in this section will apply where the servient tenement is severed and conveyed but the dominant tenement is retained by the grantor. Spaeth v. Emmett, 142 M 231, 383 P 2d 812.

References

Thisted v. Country Club Tower Corp., 146 M 87, 405 P 2d 432.

67-1608. (6866) When fee simple is presumed to pass.

References

McReynolds v. McReynolds, — M —, 414 P 2d 531.

67-1610. (6868) Grant—how far conclusive on purchasers.

References

McReynolds v. McReynolds, — M —, 414 P 2d 531.

CHAPTER 17—TRANSFER OF PERSONAL PROPERTY—MODES OF TRANSFER

Section 67-1706.1. Sending of unsolicited goods deemed a gift—no obligation in recipient.

67-1702 to 67-1704. (6878 to 6880) Repealed.

Repeal

These sections (Secs. 1531, 1540, 1541, Civ. C. 1895), relating to the transfer of personal property by sale, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

67-1706. (6882) Gifts defined.

Shares of Stock

Stocks which had been purchased by the deceased with his own funds and had been issued jointly to him and his son and daughter with right of survivorship and to son and daughter as tenants in common, deposited in safety deposit boxes rented in the names of the owners who had inspected the stock in the safety deposit boxes and included dividends from stocks in individual income tax returns, were delivered by the donor to the donees and did not belong to deceased at the time of his death so as to be a part of his estate. Marans v. Newland, 141 M 32, 374 P 2d 721, 735.

67-1706.1. Sending of unsolicited goods deemed a gift—no obligation in recipient. Unless otherwise agreed, where unsolicited goods are delivered to a person, he may refuse delivery of the goods or, if the goods are delivered, the person is not bound to return the goods to the sender. If unsolicited goods are either addressed to, or intended for, the recipient, they shall be deemed a gift, and the recipient may use or dispose of them in any manner without obligation to the sender.

History: En. Sec. 1, Ch. 210, L. 1967.

Title of Act

An act releasing recipients of unsolicited goods from any obligation to return or pay for the goods.

67-1707. (6883) **Gift—how made.**

References

Cited in Marans v. Newland, 141 M 32, 374 P 2d 721, 722, 735.

CHAPTER 18—UNIFORM GIFTS TO MINORS ACT

Section 67-1801. Definitions.
67-1802. Manner of making gift.
67-1803. Effect of gift.
67-1804. Duties and powers of custodian.
67-1806. Exemption of third persons from liability.
67-1807. Resignation, death or removal of custodian—bond—designation of successor custodian.
67-1810. Short title.
67-1811. Vested rights not to be impaired.

67-1801. Definitions. In this act, unless the context otherwise requires:

(a) An "adult" is a person who has attained the age of twenty-one (21) years.

(b) and (c). * * * [Same as parent volume.]

(d) "Court" means the district court of general jurisdiction in the state of Montana.

(e) The "custodial property" includes:

(1) all securities, life insurance policies, annuity contracts and money under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this act;

(2) the income from the custodial property; and

(3) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, surrender or other disposition of such securities, money, life insurance policies, annuity contracts and income.

(f) A "custodian" is a person so designated in a manner prescribed in this act: the term includes a successor custodian.

(g) A "financial institution" is a bank, a federal savings and loan association, a savings institution chartered and supervised as a savings and loan or similar institution under federal laws or the laws of a state or a federal credit union or a credit union chartered and supervised under the laws of a state: a "domestic financial institution" is one chartered and supervised under the laws of this state or chartered and supervised under federal law and having its principal office in this state: an "insured financial institution" is one, deposits (including a savings, share, certificate or deposit account) in which are, in whole or in part, insured by the federal deposit insurance corporation, by the federal savings and loan insurance corporation, or by a deposit insurance fund approved by this state.

(h) A "guardian" of a minor means the general guardian, guardian, tutor or curator of his property, or estate appointed or qualified by a court of this state or another state.

(i) An "issuer" is a person who places or authorizes the placing of his name on a security (other than as a transfer agent) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.

(j) A "legal representative" of a person is his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate.

(k) A "life insurance policy or annuity contract" means a life insurance policy or annuity contract issued by an insurance company authorized to do business in this state on the life of a minor to whom a gift of the policy or contract is made in the manner prescribed in this act or on the life of a member of the minor's family.

(l) A "member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption.

(m) A "minor" is a person who has not attained the age of twenty-one (21) years.

(n) A "security" includes any note, stock treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

(o) A "transfer agent" is a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities, or in the cancellation of surrendered securities.

(p) A "trust company" is a bank or corporation authorized to exercise trust powers in the state of Montana.

History: En. Sec. 1, Ch. 245, L. 1957; amd. Sec. 1, Ch. 234, L. 1967.

Amendments

The 1967 amendment, in subdivision (e)(1), inserted "life insurance policies, annuity contracts" after "all securities"; in subdivision (e)(3), inserted "surrender" after "reinvestment," and "life insurance policies, annuity contracts" after "money"; in subdivision (f), added "the term includes a successor custodian" after "in this act"; added a new subdivision (g); redesignated prior subdivisions (g) through (i) as new subdivisions (h) through (j); added a new subdivision (k); redesignated prior subdivisions (j) through (n) as new subdivisions (l) through (p); and, in new subdivision (h), substituted "means" for "includes" after "a minor," inserted "or" after "of his property," and substituted "appointed or qualified by a court of this state or another state" for "or person"; in new subdivision (p), inserted "or corporation" after "a bank"; and made minor changes in phraseology and punctuation.

NOTE.—Uniform State Law. The 1967 amendments have the effect, in substance, of substituting the Revised Uni-

form Gifts to Minors Act for the original Uniform Gifts to Minors Act (1956). Sections 67-1801 to 67-1811 now constitute the Revised Uniform Gifts to Minors Act approved by the National Conference of Commissioners on Uniform Laws in 1965 and adopted in New York.

In addition to the states listed in the parent volume, the following jurisdictions have now adopted the 1956 version of the Uniform Gifts to Minors Act: Colorado, District of Columbia, New Jersey, Ohio, Panama Canal Zone, and Rhode Island.

67-1802. Manner of making gift. (a) An adult person may, during his lifetime, make a gift of a security, a life insurance policy or annuity contract or money to a person who is a minor on the date of the gift:

(1) and (2). * * * [Same as parent volume.]

(3) if the subject of the gift is money, by paying or delivering it to a broker or a domestic financial institution for a credit to an account in the name of the donor, another adult, (an adult member of the minor's family, a guardian of the minor) or a trust company, followed, in substance, by the words: "as custodian for _____ under the (name of minor)
Montana Uniform Gifts to Minors Act."

(b) Any gift made in a manner prescribed in subsection (a) may be made to only one minor and only one person may be the custodian.

(c) A donor who makes a gift to a minor in a manner prescribed in subsection (a) shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this subsection, nor his designation of an ineligible person as custodian, nor renunciation by the person designated as custodian affects the consummation of the gift;

(4) if the subject to the gift is a life insurance policy or annuity contract, by causing the ownership of the policy or contract to be registered with the issuing insurance company in the name of the donor, another adult, an adult member of the minor's family, a guardian of the minor or a trust company, followed, in substance, by the words: "as custodian for _____ under the Montana Uniform Gifts to Minors Act."
(name of minor)

History: En. Sec. 2, Ch. 245, L. 1957; amd. Sec. 2, Ch. 234, L. 1967.

Amendments

The 1967 amendment, in subsection (a), inserted "a life insurance policy or annuity contract" after "of a security"; in subsection (a)(3), substituted "a domestic financial institution for a credit" for "a bank for credit" before "to an account," deleted "person" after "adult," and substituted "trust company" for "bank with trust powers" before "followed, in substance"; and added subsection (c)(4).

67-1803. Effect of gift. (a) A gift made in a manner prescribed in this act is irrevocable and conveys to the minor indefeasibly vested legal title to the security, life insurance policy, annuity contract or money given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this act.

(b) By making a gift in a manner prescribed in this act, the donor incorporates in his gift all the provisions of this act and grants to the custodian, and to any issuer, transfer agent, bank, financial institution, life insurance company, broker or third person dealing with a person

designated as custodian, the respective powers, rights and immunities provided in this act.

History: En. Sec. 3, Ch. 245, L. 1957; amd. Sec. 3, Ch. 234, L. 1967.

Amendments

The 1967 amendment, in subsection (a), inserted "life insurance policy, annuity contract" after "security," and, in subsection (b), inserted "financial institution, life insurance company" after "bank."

67-1804. Duties and powers of custodian. (a) and (b). * * * [Same as parent volume.]

(c) The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of fourteen (14) years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education.

(d) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of twenty-one (21) years, or if the minor dies before attaining the age of twenty-one (21) years, he shall thereupon deliver or pay it over to the estate of the minor.

(e) The custodian, notwithstanding statutes restricting investment by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain a security given to the minor in a manner prescribed in this act or hold money so given in an account in the financial institution to which it was paid or delivered by the donor.

(f) The custodian may sell, exchange, convert, surrender or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

(g) The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for ———————— under the
(name of minor)
Montana Uniform Gifts to Minors Act." The custodian shall hold all money which is custodial property in an account with a broker or in an insured domestic financial institution in the name of the custodian, followed, in substance, by the words: "as custodian for ————————
(name of minor)
under the Montana Uniform Gifts to Minors Act." The custodian shall

keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

(h) The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of fourteen (14) years.

(i). * * * [Same as parent volume.]

(j) If the subject of the gift is a life insurance policy or annuity contract, the custodian:

(1) in his capacity as custodian, has all the incidents of ownership in the policy or contract to the same extent as if he were the owner, except that the designated beneficiary of any policy or contract on the life of the minor shall be the minor's estate and the designated beneficiary of any policy or contract on the life of a person other than the minor shall be the custodian as custodian for the minor for whom he is acting; and

(2) may pay premiums on the policy or contract out of the custodial property.

History: En. Sec. 4, Ch. 245, L. 1957; amd. Sec. 4, Ch. 234, L. 1967.

Amendments

The 1967 amendment, in subsection (e), added "or hold money so given in an account in the financial institution to which it was paid or delivered by the donor" after "in this act"; in subsection (f), inserted "surrender" after "convert"; in subsection (g), substituted "an insured domestic financial institution" for "a bank" after "with a broker or in"; added subsection (j); and inserted arabic numbers after the written numbers throughout the section.

67-1806. Exemption of third persons from liability. No issuer, transfer agent, bank, life insurance company, broker or other person or financial institution acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated as custodian by the purported donor or by the custodian or purporting to act as a custodian has been duly designated or whether any purchase, sale, or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by this act, or is obliged to inquire into the validity or propriety under this act of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of custodian of any money or other property paid or delivered to him. No issuer, transfer agent, bank, life insurance company, broker or other person or financial institution acting on any instrument of designation of a successor custodian, executed as provided in subsection (a) of section 7 [67-1807] of this act by a minor to whom a gift has been made in a manner prescribed in this act and who has attained the age of fourteen (14) years, is responsible for determining whether the person designated by the minor as successor custodian has been duly designated, or is obliged to inquire into the validity or propriety under this act of the instrument of designation.

History: En. Sec. 6, Ch. 245, L. 1957; amd. Sec. 5, Ch. 234, L. 1967.

Amendments

The 1967 amendment inserted "life insurance company" after "bank"; inserted "or financial institution" after "other person"; inserted "as custodian" after "designated"; inserted "or by the custodian" after "the purported donor"; added the last sentence, and made minor changes in phraseology and punctuation.

67-1807. Resignation, death or removal of custodian—bond—designation of successor custodian. (a) Only an adult member of the minor's family, a guardian of the minor or a trust company is eligible to become a successor custodian. A custodian may designate his successor by executing and dating an instrument of designation before a subscribing witness other than the successor; the instrument of designation may, but need not, contain the resignation of the custodian. If the custodian does not so designate his successor before he dies or becomes legally incapacitated, and the minor has attained the age of fourteen (14) years, the minor may designate a successor custodian by executing an instrument of designation before a subscribing witness other than the successor. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed by this act.

(b) The designation of a successor custodian as provided in subsection (a) takes effect as to each item of the custodial property when the custodian resigns, dies or becomes legally incapacitated and the custodian or his legal representative:

(1) causes the item if it is a security which is custodial property and in registered form or a life insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance policy or annuity contract, in the name of the successor custodian followed, in substance, by the words: "as custodian for _____ under the Montana Uniform Gifts to Minors Act"; and
(name of minor)

(2) delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof and any additional instruments required for the transfer thereof to the successor custodian.

(c) A custodian who executes an instrument of designation of his successor containing the custodian's resignation as provided in subsection (a) shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in subsection (a) by the custodian or, if none, by the minor if he has no guardian and has attained the age of fourteen (14) years, or in the possession and control of the guardian of the minor if he has a guardian. If the custodian has executed as provided in subsection (a) more than one instrument of designa-

tion, his legal representative shall treat the instrument dated on an earlier date as having been revoked by the instrument dated on a later date.

(d) If a person designated as custodian or as successor custodian by the custodian as provided in subsection (a) is not eligible, dies or becomes legally incapacitated before the minor attains the age of twenty-one (21) years and if the minor has a guardian, the guardian of the minor shall be successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated as provided in subsection (a), a donor, his legal representative of the custodian or an adult member of the minor's family may petition the court for the designation of a successor custodian.

(e) A donor, the legal representative of a donor, a successor custodian, an adult member of the minor's family, a guardian of the minor or the minor, if he has attained the age of fourteen (14) years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.

(f) Upon the filing of a petition as provided in this section, the district court shall grant and order, directed to the persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor.

History: En. Sec. 7, Ch. 245, L. 1957; amd. Sec. 6, Ch. 234, L. 1967.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

67-1810. Short title. This act may be cited as the Revised Montana Uniform Gifts to Minors Act.

History: En. Sec. 10, Ch. 245, L. 1957; amd. Sec. 7, Ch. 234, L. 1967.

Amendments

The 1967 amendment inserted "Revised" before "Montana."

67-1811. Vested rights not to be impaired. Nothing in this act shall be construed to impair constitutionally vested rights. The provisions of the act hereby amended as hereby amended shall be construed as a continuation of the act hereby amended according to the language employed and not as a new enactment. This amendment of the act hereby amended does not affect gifts made in a manner prescribed therein nor the powers, duties or immunities conferred by gifts in such manner upon custodians and persons dealing with custodians. The provisions of the act hereby amended as hereby amended henceforth apply, however, to all gifts made in a manner and form prescribed in the act hereby amended except in so far as such application impairs constitutionally vested rights.

History: En. Sec. 12, Ch. 245, L. 1957; amd. Sec. 8, Ch. 234, L. 1967.

Amendments

The 1967 amendment added the second, third and last sentences.

CHAPTER 19—PRINCIPAL AND INCOME ACT

Section 67-1912. Expenses—apportionment.

67-1912. Expenses—apportionment. (1) All ordinary expenses incurred in connection with the trust estate or with its administration and management, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the estates of both tenant and remainderman, interest on mortgages on the principal, ordinary repairs, trustees' compensation annually computed on principal, compensation of assistants, and court costs and attorneys' and other fees on regular accountings, shall be paid out of income. But such expenses where incurred in disposing of, or as carrying charges on, unproductive estate as defined in section 67-1911, shall be paid out of principal, subject to the provisions of subsection (2) of section 67-1911.

(2) All other expenses, including trustees' final termination commissions computed upon principal, cost of investing or reinvesting principal, attorneys' fees and other costs incurred in maintaining or defending any action to protect the trust or the property or assure the title thereof, unless due to the fault or cause of the tenant, and costs of, or assessments for, improvements to property forming part of the principal, shall be paid out of principal. Any tax levied by any authority, federal, state or foreign, upon profit or gain defined as principal under the terms of subsection (2) of section 67-1903 shall be paid out of principal, notwithstanding said tax may be denominated a tax upon income by the taxing authority.

(3) Expenses paid out of income according to subsection (1) which represent regularly recurring charges shall be considered to have accrued from day to day, and shall be apportioned on that basis whenever the right of the tenant begins or ends at some date other than the payment date of the expenses. Where the expenses to be paid out of income are of unusual amount, the trustee may distribute them throughout an entire year or part thereof, or throughout a series of years. After such distribution, where the right of the tenant ends during the period, the expenses shall be apportioned between tenant and remainderman on the basis of such distribution.

(4) Where the costs of, or special taxes or assessments for, an improvement representing an addition of value to property held by the trustee as part of principal are paid out of principal, as provided in subsection (2), the trustee shall reserve out of income and add to the principal each year a sum equal to the cost of the improvement divided by the number of years of the reasonably expected duration of the improvement.

History: En. Sec. 12, Ch. 277, L. 1959; amd. Sec. 1, Ch. 134, L. 1965.

Amendment

The 1965 amendment substituted "annually" for "except commissions" following "trustees' compensation" in the first sentence of subsection (1); and inserted "final termination" following "including trustees'" near the beginning of subsection (2).

CHAPTER 20—SURVEYS AND CO-ORDINATES

Section 67-2001. Corner recordation—citation of act.
67-2002. Purpose of act.
67-2003. Definitions.
67-2004. Filing of corner record required.
67-2005. Filing permitted as to any property corner.
67-2006. Form to be prescribed by board.
67-2007. County clerk shall receive, file and cross reference.
67-2008. Surveyor must rehabilitate monuments.
67-2009. Corner records to be certified.
67-2010. Filing of corner records on locations made before effective date.
67-2011. Co-ordinate system adopted—designation—division of state into zones.
67-2012. Designation of zonal systems.
67-2013. Use of x- and y-co-ordinates.
67-2014. Descriptions of tracts lying across zone boundaries.
67-2015. Technical description of zones—stations marked on ground.
67-2016. Proximity to station required for use of co-ordinates in recorded instrument.
67-2017. References to Montana Co-ordinate System.
67-2018. Public land survey descriptions prevail.
67-2019. Reliance on co-ordinate system not required of purchaser or mortgagee.

67-2001. Corner recordation—citation of act. This act may be cited as the "Corner Recordation Act of Montana."

History: En. Sec. 1, Ch. 202, L. 1963.

Title of Act

An act requiring and providing for filing of corner records containing information on public land survey corners by a licensed land surveyor; defining terms; providing for filing and filing fees, and making records available to the public; allowing licensed land surveyors to file information on any property corner; requiring surveyors to reconstruct and perpetuate monuments of public land survey corners; directing that unconstitutionality of a part of this act shall not affect or impair the remainder, and repealing all acts and parts of acts inconsistent herewith.

67-2002. Purpose of act. It is the purpose of this act to protect and perpetuate public land survey corners and information concerning the location of such corners by requiring the systematic establishment of monuments and recording of information concerning the marking of the location of such public land survey corners and to allow the systematic location of other property corners, thereby providing for property security and a coherent system of property location and identification of ownerships; and thereby eliminating the repeated necessity for re-establishment and relocations of such corners where once they are established and located.

History: En. Sec. 2, Ch. 202, L. 1963.

67-2003. Definitions. Except where the context indicates a different meaning, terms used in this act shall be defined as follows:

(1) A "property corner" is a geographic point on the surface of the earth, and is on, a part of, and controls a property line.

(2) A "property controlling corner" for a property is a public land survey corner, or any property corner, which does not lie on a property line of the property in question, but which controls the location of one or more of the property corners of the property in question.

(3) A "public land survey corner" is any corner actually established and monumented in an original survey or resurvey used as a basis of legal

description for issuing a patent for the land to a private person from the United States government.

(4) A "corner," unless otherwise qualified, means a property corner, or a property controlling corner, or a public land survey corner, or any combination of these.

(5) An "accessory to a corner" is any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.

(6) A "monument" is an accessory that is presumed to occupy the exact position of a corner.

(7) A "reference monument" is a special monument that does not occupy the same geographical position as the corner itself, but whose spatial relationship to the corner is recorded, and which serves to witness the corner.

(8) A "registered surveyor" is a surveyor who is registered to practice land surveying under the Montana Professional Engineers Registration Act and has a paid up license for that calendar year, or who is authorized under the Montana Professional Engineers Registration Act to practice land surveying.

(9) The "board" is the state board of registration for professional engineers and land surveyors.

History: En. Sec. 3, Ch. 202, L. 1963.

67-2004. Filing of corner record required. A surveyor shall complete, sign, stamp with his seal and file with the county clerk and recorder of the county where the corner is situated, a written record of corner establishment or restoration to be known as a "corner record" for every public land survey corner and accessory to such corner which is established, re-established, monumented, re-monumented, restored, rehabilitated, perpetuated or used as control in any survey by such surveyor, and within ninety (90) days thereafter, unless the corner and its accessories are substantially as described in an existing corner record filed in accordance with the provisions of this act.

History: En. Sec. 4, Ch. 202, L. 1963.

67-2005. Filing permitted as to any property corner. A surveyor may file such corner record as to any property corner, property controlling corner, reference monument or accessory to a corner.

History: En. Sec. 5, Ch. 202, L. 1963.

67-2006. Form to be prescribed by board. The board shall by regulation provide and prescribe the information which shall be necessary to be included in the corner record and the board shall prescribe the form in which such corner record shall be presented and filed.

History: En. Sec. 6, Ch. 202, L. 1963.

67-2007. County clerk shall receive, file and cross reference. (1) The county clerk and recorder of the county containing the corner shall receive

the completed corner record and preserve it in a hardbound book. The books shall be numbered in numerical order as filled.

(2) The clerk shall number the forms in numerical order as they are filed.

(3) The book and page number in which the said corner record is filed shall be placed by the clerk near that same corner on a cross index plat which the clerk shall provide for such a purpose.

(4) The county clerk and recorder shall make these records available for public inspection during all usual office hours.

(5) For purposes of determining the filing fee hereunder, the corner record shall be considered as a similar service to recording a townsite map of one (1) lot.

History: En. Sec. 7, Ch. 202, L. 1963.

67-2008. Surveyor must rehabilitate monuments. In every case where a corner record of a public land survey corner is required to be filed under the provisions of this act, the surveyor must reconstruct or rehabilitate the monument of such corner, and accessories to such corner, so that the same shall be left by him in such physical condition that it remains as permanent a monument as is reasonably possible and so that the same may be reasonably expected to be located with facility at all times in the future.

History: En. Sec. 8, Ch. 202, L. 1963.

67-2009. Corner records to be certified. No corner record shall be filed unless the same is signed by a registered surveyor and stamped with his seal, or in the case of an agency of the United States government or the state of Montana the certificate may be signed by the survey party chief, making the survey and approved, signed and sealed by the registered surveyor in responsible charge of the agency.

History: En. Sec. 9, Ch. 202, L. 1963.

67-2010. Filing of corner records on locations made before effective date. Corner records may be filed concerning corners established, reestablished or restored before the effective date of this act.

History: En. Sec. 10, Ch. 202, L. 1963.

Separability Clause

Section 11 of Ch. 202, Laws 1963 read "Severability of provisions. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 12 of Ch. 202, Laws 1963 repealed all acts and parts of acts inconsistent therewith.

67-2011. Co-ordinate system adopted—designation—division of state into zones. The system of plane co-ordinates which has been established by the United States Coast and Geodetic Survey for defining and stating the positions or locations of points on the surface of the earth within the state of Montana is hereafter to be known and designated as the "Montana Co-ordinate System."

For the purpose of the use of this system the state is divided into a "North Zone," and "Central Zone," and a "South Zone."

The area now included in the following counties shall constitute the North Zone: Blaine, Chouteau, Daniels, Flathead, Glacier, Hill, Liberty, Lincoln, McCone, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, and Valley.

The area now included in the following counties shall constitute the Central Zone: Cascade, Dawson, Fergus, Garfield, Judith Basin, Lake, Lewis and Clark, Meagher, Mineral, Missoula, Petroleum, Powell, Prairie, Richland, Sanders, and Wibaux.

The area now included in the following counties shall constitute the South Zone: Beaverhead, Big Horn, Broadwater, Carbon, Carter, Custer, Deer Lodge, Fallon, Gallatin, Golden Valley, Granite, Jefferson, Madison, Musselshell, Park, Powder River, Ravalli, Rosebud, Silver Bow, Stillwater, Sweet Grass, Treasure, Wheatland, and Yellowstone.

History: En. Sec. 1, Ch. 232, L. 1965.

Title of Act

An act to describe, define, and officially adopt a system of co-ordinates for designating and stating the positions of points on the surface of the earth within Montana.

67-2012. Designation of zonal systems. As established for use in the North Zone, the Montana Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Montana Co-ordinate System, North Zone."

As established for use in the Central Zone, the Montana Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Montana Co-ordinate System, Central Zone."

As established for use in the South Zone, the Montana Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Montana Co-ordinate System, South Zone."

History: En. Sec. 2, Ch. 232, L. 1965.

67-2013. Use of x- and y-co-ordinates. The plane co-ordinates of a point on the earth's surface, to be used in expressing the position or location of such point in the appropriate zone of this system, shall consist of two distances, expressed in feet and decimals of a foot. One of these distances, to be known as the "x-co-ordinate," shall give the position in an east-and-west direction; the other, to be known as the "y-co-ordinate," shall give the position in a north-and-south direction. These co-ordinates shall be made to depend upon and conform to the co-ordinates, on the Montana Co-ordinate System, of the triangulation and traverse stations of the United States Coast and Geodetic Survey within the state of Montana, as those co-ordinates have been determined by the said survey.

History: En. Sec. 3, Ch. 232, L. 1965.

67-2014. Descriptions of tracts lying across zone boundaries. When any tract of land to be defined by a single description extends from one into another of the above co-ordinate zones, the positions of all points on

its boundaries may be referred to either of such zones, the zone which is used being specifically named in the description.

History: En. Sec. 4, Ch. 232, L. 1965.

67-2015. Technical description of zones—stations marked on ground. (a) For purposes of more precisely defining the Montana Co-ordinate System, the following description by the United States Coast and Geodetic Survey is adopted:

The Montana Co-ordinate System, North Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 47° 51′ and 48° 43′, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian 109° 30′ west of Greenwich and the parallel 47° 00′ north latitude. This origin is given the co-ordinates: x = 2,000,000 feet and y = 0 feet.

The Montana Co-ordinate System, Central Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 46° 27′ and 47° 53′, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian 109° 30′ west of Greenwich and the parallel 45° 50′ north latitude. This origin is given the co-ordinates: x = 2,000,000 feet and y = 0 feet.

The Montana Co-ordinate System, South Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 44° 52′ and 46° 24′, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian 109° 30′ west of Greenwich and the parallel 47° 00′ north latitude. This origin is given the co-ordinates: x = 2,000,000 feet and y = 0 feet.

(b) The position of the Montana Co-ordinate System shall be as marked on the ground by triangulation or traverse stations established in conformity with the standards adopted by the United States Coast and Geodetic Survey for first-order and second-order work, whose positions have been rigidly adjusted on the North American datum of 1927, and whose co-ordinates have been computed on the system herein defined. Any such station may be used for establishing a survey connection with the Montana Co-ordinate System.

History: En. Sec. 5, Ch. 232, L. 1965.

67-2016. Proximity to station required for use of co-ordinates in recorded instrument. No co-ordinates based on the Montana Co-ordinate System, purporting to define the position of a point on a land boundary, shall be presented to be recorded in any public land records or deed records unless such point is within one-half mile of a triangulation or traverse station established in conformity with the standards prescribed in section 5 [67-2015] of this act; provided that said one-half mile limitation may be modified by a duly authorized state agency to meet local conditions.

History: En. Sec. 6, Ch. 232, L. 1965.

67-2017. References to Montana Co-ordinate System. The use of the term "Montana Co-ordinate System" on a map, report of survey, or other document, shall be limited to co-ordinates based on the Montana Co-ordinate System as defined in this act.

History: En. Sec. 7, Ch. 232, L. 1965.

67-2018. Public land survey descriptions prevail. Whenever co-ordinates based on the Montana Co-ordinate System are used to describe any tract of land which in the same document is also described by reference to any subdivision, line, or corner of the United States public land surveys, the description by co-ordinates shall be construed as supplemental to the basic description of such subdivision, line or corner contained in the official plats and field notes filed of record, and in the event of any conflict the description by reference to the subdivision, line or corner of the United States public land surveys shall prevail over the description by co-ordinates.

History: En. Sec. 8, Ch. 232, L. 1965.

67-2019. Reliance on co-ordinate system not required of purchaser or mortgagee. Nothing contained in this act shall require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Montana Co-ordinate System.

History: En. Sec. 9, Ch. 232, L. 1965.

Separability Clause

Section 10 of Ch. 232, Laws 1965 read "If any provision of this act shall be declared invalid, such invalidity shall not affect any other portion of this act which can be given effect without the invalid portion, and to this end the provisions of the act are declared to be severable."

CHAPTER 21—SALE OR LEASE OF SUBDIVIDED LANDS

Section 67-2101. Definition of terms.
67-2102. Rules and regulations.
67-2103. Notice of intention to offer subdivided lands—contents of notice.
67-2104. Fee for filing of notice of intention.
67-2105. Additional information required by commissioner.
67-2106. Fee for filing of questionnaire—disposition of fees.
67-2107. Investigation of subdivisions—powers of commissioner.
67-2108. Findings not to be used in advertising.
67-2109. Blanket encumbrance defined.
67-2110. Required provisions for protection of purchasers and lessees.
67-2111. Contracts for sale of real property in subdivisions—required contents.
67-2112. Notice of multiple sales or leases to one purchaser or lessee.
67-2113. Inspection of records by commissioner—notice of change of address or change of depository.
67-2114. Orders to desist and refrain—prohibition of sales and leases—hearings.
67-2115. Accrual of cause of action for violation.
67-2116. Misdemeanors enumerated.

67-2101. Definition of terms. The word "subdivision" and "subdivided lands" as used in this act shall mean any tract of land which is hereafter divided into five (5) or more parcels, any parcel of which is less

than five (5) acres in size, and which is offered for sale or lease outside the state of Montana.

History: En. Sec. 1, Ch. 191, L. 1963.

Title of Act

An act defining "subdivision" and "subdivided lands"; providing for the regulation, supervision and control of subdivisions by the state real estate commissioner and defining his duties and powers relative thereto; and providing a penalty for the violation of this act.

67-2102. Rules and regulations. The state real estate commissioner hereafter referred to as the "commissioner" may make and adopt such rules and regulations as are reasonably necessary for the enforcement of this act.

History: En. Sec. 2, Ch. 191, L. 1963.

67-2103. Notice of intention to offer subdivided lands—contents of notice. Prior to the time when subdivided lands are to be offered for sale or lease outside the state of Montana, the owner, his agent or subdivider shall notify the state real estate commissioner in writing of his intention to sell or lease such offering.

The notice of intention shall contain the following information.

(a) The name and address of the owner.

(b) The name and address of the subdivider.

(c) The legal description and area of lands, together with a map showing the layout proposed and relation to existing streets or roads.

(d) A true statement of the conditions of the title to the land, particularly including all encumbrances thereon.

(e) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any and all forms of conveyance intended to be used.

(f) A true statement of the provision for legal access, sewage disposal, and public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities.

(g) Copies of any and all advertising, information, promotion brochures or similar material depicting the existing property or as it is to exist, which might cause or tend to induce purchase of the said property, or an interest therein, when said material is or might be circulated outside of this state.

(h) Such other information as the owner, his agent or subdivider, may desire to present.

History: En. Sec. 3, Ch. 191, L. 1963.

67-2104. Fee for filing of notice of intention. A filing fee of fifty dollars ($50) shall accompany the notice of intention provided for in section 3 [67-2103] of this act.

History: En. Sec. 4, Ch. 191, L. 1963.

67-2105. Additional information required by commissioner. After receiving the notice of intention, the commissioner may require such additional information concerning the project as he deems necessary, for

which purpose he may prepare a questionnaire for the owner, his agent or subdivider, to answer.

History: En. Sec. 5, Ch. 191, L. 1963.

67-2106. Fee for filing of questionnaire — disposition of fees. The questionnaire as provided for in section 5 [67-2105] of this act shall be accompanied by a filing fee of one hundred dollars ($100). All fees and charges provided for by this act shall be paid to the commissioner and by him deposited with the state treasurer. The state treasurer shall place five per cent (5%) of all such fees and charges in the general fund and ninety-five per cent (95%) of all such fees and charges in the earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used to pay all claims for expense incurred in the administration of this act when such claims have been approved as provided by law.

History: En. Sec. 6, Ch. 191, L. 1963.

67-2107. Investigation of subdivisions—powers of commissioner. The state real estate commissioner may investigate any subdivision being offered for sale or lease under the provisions of this act. For the purpose of such investigation, the commissioner may:

1. Use and rely upon any relevant information or data concerning a subdivision obtained by it from the federal housing administration, the United States veterans administration, or any other agency having comparable duties and functions in relation to subdivisions or property therein.

2. Require reports prepared by competent authorities as to any hazard to which the subdivision may be subject or any factor which might affect the value or utility of lots or parcels within the subdivision.

3. Require evidence of compliance with the requirements of appropriate authorities.

4. Require an inspection of the subdivision to be made.

History: En. Sec. 7, Ch. 191, L. 1963.

67-2108. Findings not to be used in advertising. It shall be unlawful for any person to incorporate in any advertising material or use for any advertising purposes the results or findings of the commissioner as provided for in this act.

History: En. Sec. 8, Ch. 191, L. 1963.

67-2109. Blanket encumbrance defined. For the purpose of this act, a blanket encumbrance shall be considered to mean a trust deed or mortgage or any other lien or encumbrance, mechanics' lien or otherwise, securing or evidencing the payment of money and affecting land to be subdivided or affecting more than one lot or parcel of subdivided land, or an agreement affecting more than one such lot or parcel by which the owner or subdivider holds said subdivision under an option, contract to sell, or trust agreement.

History: En. Sec. 9, Ch. 191, L. 1963.

67-2110. Required provisions for protection of purchasers and lessees. It shall be unlawful for the owner or subdivider to offer to sell or lease

or to sell or lease lots or parcels within a subdivision to persons residing out of the state of Montana unless one of the following conditions is complied with:

(a) All sums paid or advanced by purchasers shall be impounded in an escrow or other depository acceptable to the state real estate commissioner until: 1. The title or other interest contracted for whether it be title of record, equitable or other interest, is delivered to such purchaser or lessee and until: 2. A proper release is obtained from any such blanket encumbrance, or: 3. Either the owner, subdivider, purchaser or lessee defaults in his undertaking, in which event the moneys shall be paid to the party who is not in default and is entitled thereto.

(b) The title to the subdivision is to be held in trust under an agreement of trust acceptable to the commissioner until a proper release from such blanket encumbrance is obtained and title or other interest contracted for is delivered to such purchaser or lessee.

(c) A bond in the amount of twenty-five hundred dollars ($2,500) to the state of Montana is furnished to the state real estate commissioner for the benefit and protection of purchasers or lessees of such lots or parcels, in such amount and subject to such terms as may be approved by the commissioner, who shall provide for the return of moneys paid or advanced by any purchaser or lessee, for or on account of purchase or lease of any such lot or parcel if the interest contracted for is not delivered or a proper release from such blanket encumbrance is not obtained; provided, however, that if such purchaser or lessee, by reason of default, is not entitled to the return of such moneys, or any portion thereof, then such bond shall be exonerated to the extent of the amount of such moneys to which such purchaser or lessee is not entitled.

History: En. Sec. 10, Ch. 191, L. 1963.

67-2111. Contracts for sale of real property in subdivisions—required contents. Every sales contract relating to the purchase of real property in a subdivision subject to the provisions of this act, shall clearly set forth the legal description of the property, the principal amount of the blanket encumbrances outstanding at the date of the contract, and the terms of the contract.

History: En. Sec. 11, Ch. 191, L. 1963.

67-2112. Notice of multiple sales or leases to one purchaser or lessee. When five or more lots or parcels within a subdivision subject to the provisions of this act, are optioned, leased or sold to another, or, when an interest therein is acquired by one owner, lessee or optionee, the state real estate commissioner shall be notified by the parties to the transaction.

History: En. Sec. 12, Ch. 191, L. 1963.

67-2113. Inspection of records by commissioner—notice of change of address or change of depository. Records of the sale or lease of parcels within a subdivision subject to the provisions of this act, shall be subject to inspection by the state real estate commissioner and the commissioner

shall be notified of any change of address affecting the location of the owner's, subdivider's or agent's records or of any change in depository for the impounding of purchasers' money in accordance with the provisions herein.

History: En. Sec. 13, Ch. 191, L. 1963.

67-2114. Orders to desist and refrain—prohibition of sales and leases—hearings. Whenever in the opinion of the state real estate commissioner any person has or is violating, or is about to violate, any of the provisions of this act, the commissioner may order the person to desist and refrain from doing so, or, if an examination of the project shows that the sale or lease would constitute misrepresentation to, or deceit or fraud of, the purchasers or lessees of lots or parcels in a subdivision, the commissioner may issue an order prohibiting the sale or lease, or either, of the property in this state. If, after such an order is made, a request for a hearing by the commissioner is filed in writing and a hearing is not held within sixty (60) days thereafter, the order is rescinded.

The hearing upon the cease, desist and refrain order shall be held in the same manner and under the same requirements and conditions as is provided in section 66-1917, Revised Codes of Montana, 1947.

History: En. Sec. 14, Ch. 191, L. 1963.

67-2115. Accrual of cause of action for violation. For the purpose of calculating the period of any applicable statute of limitations in any action or proceeding, either civil or criminal involving any violation of this act, the cause of action shall be deemed to have accrued not earlier than the time of recording with the county recorder of the county in which the property sold or leased in violation of this act and which describes a lot or parcel so wrongfully sold or leased.

This section does not prohibit the maintenance of such action at any time during the recording of such instruments.

History: En. Sec. 15, Ch. 191, L. 1963.

67-2116. Misdemeanors enumerated. The following acts are misdemeanors:

(a) The willful violation or failure to comply with any of the provisions of this act.

(b) The willful violation, failure, omission or neglect to obey, observe or comply with any order, permit, decision, demand or requirement of the state real estate commissioner.

(c) The offering for sale or lease as an agent, salesman, or broker for a subdivider, developer, or owner or subdivided lands or a subdivision, wherever situated, which is being offered for sale outside the state of Montana without first complying with the provisions of this act.

(d) The advertising for sale or lease in this state of a parcel in an out-of-state subdivision or in any other manner aiding an owner, subdivider, or developer of an out-of-state subdivision who has not complied with the provisions of this act, to offer within this state subdivided lands.

History: En. Sec. 16, Ch. 191, L. 1963.

Repealing Clause

Section 17 of Ch. 191, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 18 of Ch. 191, Laws 1963 read "If any clause, sentence, paragraph, or part of this act shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not effect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered."

Effective Date

Section 19 of Ch. 191, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

CHAPTER 22—DISPOSITION OF UNCLAIMED PROPERTY

Section 67-2201. Definitions and use of terms.
67-2202. Property held by banking or financial organizations or by business associations.
67-2203. Unclaimed funds held by life insurance corporations.
67-2204. Deposits and refunds held by utilities.
67-2205. Undistributed dividends and distributions of business associations.
67-2206. Property of business associations and banking or financial organizations held in course of dissolution.
67-2207. Property held by fiduciaries.
67-2208. Property held by state courts and public officers and agencies.
67-2209. Miscellaneous personal property held for another person.
67-2210. Reciprocity for property presumed abandoned or escheated under the laws of another state.
67-2211. Report of abandoned property.
67-2212. Notice and publication of lists of abandoned property.
67-2213. Payment or delivery of abandoned property.
67-2214. Relief from liability by payment or delivery.
67-2215. Income accruing after payment or delivery.
67-2216. Periods of limitation not a bar.
67-2217. Sale of abandoned property.
67-2218. Deposit of funds.
67-2219. Claim for abandoned property paid or delivered.
67-2220. Determination of claims.
67-2221. Judicial action upon determinations.
67-2222. Election to take payment or delivery.
67-2223. Examination of records.
67-2224. Proceeding to compel delivery of abandoned property.
67-2225. Penalties.
67-2226. Rules and regulations.
67-2227. Effect of laws of other states.
67-2228. Severability.
67-2229. Uniformity of interpretation.
67-2230. Short title.

67-2201. Definitions and use of terms. As used in this act, unless the context otherwise requires:

(a) "Banking organization" means any bank, national bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or a private banker engaged in business in this state.

(b) "Business association" means any corporation, other than a public corporation, joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

(c) "Financial organization" means any savings and loan association, building and loan association, credit union, co-operative bank, or investment company engaged in business in this state.

(d) "Holder" means any person in possession of property subject to this act belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this act.

(e) "Life insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(f) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, or creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this act, or his legal representative.

(g) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

(h) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

History: En. Sec. 1, Ch. 244, L. 1963.

Title of Act

An act relating to the disposition of unclaimed property and making uniform the law with reference thereto; making provision for classifying such property as abandoned and setting up provisions of law for handling such property so as to protect the interests of the original owners, relieve the holders of annoyance, expense and liability, preclude multiple liability, and preserve any windfalls that may result from abandonment to the state of Montana; providing that the funds becoming available to the state under the provisions of this act shall be deposited in the public school fund; and providing penalties for violations of this act.

NOTE.—Uniform State Law. Sections 67-2201 to 67-2230 constitute the "Uniform Disposition of Unclaimed Property Act" approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1955 and adopted in substance in Arizona, California, Florida, Idaho, Illinois, New Hampshire, New Mexico, Oregon, Utah, Virginia, and Washington.

67-2202. Property held by banking or financial organizations or by business associations. The following property held or owing by a banking or financial organization or by business association is presumed abandoned:

(a) Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within seven (7) years:

(1) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(2) Corresponded in writing with the banking organization concerning the deposit; or

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(b) Any funds paid in this state toward the purchase of shares or other interest in a financial organization, or any deposit made therewith in this

state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within seven (7) years:

(1) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(2) Corresponded in writing with the financial organization concerning the funds or deposit; or

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

(c) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, money orders, and travelers' checks, that, with the exception of travelers' checks, has been outstanding for more than seven (7) years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of travelers' checks, that has been outstanding for more than fifteen (15) years from the date of its issuance, unless the owner has within seven (7) years, or within fifteen (15) years in the case of travelers' checks, corresponded in writing with the banking or financial organization or business association concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization or business association.

(d) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than seven (7) years from the date on which the lease or rental period expired.

History: En. Sec. 2, Ch. 244, L. 1963; amd. Sec. 1, Ch. 226, L. 1967.

Amendments

The 1967 amendment inserted "or by a business association" after "financial organization" wherever it appears in the section and substituted "money orders, and travelers' checks, that, with the exception of travelers' checks, has been outstanding for more than seven (7) years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of travelers' checks, that has been outstanding for more than fifteen (15) years from the date of its issuance, unless the owner has within seven (7) years, or within fifteen (15) years in the case of travelers' checks" for "and travelers' checks, that has been outstanding for more than seven (7) years from the date it was payable, or from the date of its issuance if payable on demand, unless the owner has within seven (7) years" after "certificates of deposit, drafts" in subsection (c).

67-2203. Unclaimed funds held by life insurance corporations. (a) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is

presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than seven (7) years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding seven (7) years, (1) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

History: En. Sec. 3, Ch. 244, L. 1963.

67-2204. Deposits and refunds held by utilities. The following funds held or owing by any utility are presumed abandoned:

(a) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven (7) years after the termination of the services for which the deposit or advance payment was made.

(b) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven (7) years after the date it became payable in accordance with the final determination or order providing for the refund.

History: En. Sec. 4, Ch. 244, L. 1963.

67-2205. Undistributed dividends and distributions of business associations. Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a co-operative, who has not claimed it, or corresponded in writing with the business association concerning it, within seven (7) years after the date prescribed for payment or delivery, is presumed abandoned if:

(a) It is held or owing by a business association organized under the laws of or created in this state; or

(b) It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state,

and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

History: En. Sec. 5, Ch. 244, L. 1963.

67-2206. Property of business associations and banking or financial organizations held in course of dissolution. All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within two (2) years after the date for final distribution, is presumed abandoned.

History: En. Sec. 6, Ch. 244, L. 1963.

67-2207. Property held by fiduciaries. All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within seven (7) years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(a) If the property is held by a business association, banking organization, or financial organization organized under the laws of or created in this state; or

(b) If it is held by a business association, banking organization, or financial organization doing business in this state, but not organized under the laws of or created in this state, and the records of the business association, banking organization, or financial organization indicate that the last known address of the person entitled thereto is in this state; or

(c) If it is held in this state by another person.

History: En. Sec. 7, Ch. 244, L. 1963.

67-2208. Property held by state courts and public officers and agencies. All intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than seven (7) years is presumed abandoned.

History: En. Sec. 8, Ch. 244, L. 1963.

67-2209. Miscellaneous personal property held for another person. All intangible personal property, not otherwise covered by this act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven (7) years after it became payable or distributable is presumed abandoned.

History: En. Sec. 9, Ch. 244, L. 1963.

67-2210. Reciprocity for property presumed abandoned or escheated under the laws of another state. If specific property which is subject to the

provisions of sections 2, 5, 6, 7 and 9 [67-2202, 67-2205, 67-2206, 67-2207 and 67-2209] is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this act if:

(a) It may be claimed as abandoned or escheated under the laws of such other state; and

(b) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

History: En. Sec. 10, Ch. 244, L. 1963.

67-2211. Report of abandoned property. (a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this act shall report to the state treasurer with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) Except with respect to travelers' checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of three dollars ($3) or more presumed abandoned under this act;

(2) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under three dollars ($3) each may be reported in aggregate;

(4) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) Other information which the state treasurer prescribes by rule as necessary for the administration of this act.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 every three (3) years as of June 30 next preceding, but the reports of life insurance corporations, banking and financial organizations and co-operatives, shall be filed before May 1 of each year as of December 31 next preceding. The state treasurer may request that any other reports be filed each year. The state treasurer may postpone the reporting date upon written request by any person required to file a report. The state treasurer shall furnish forms for this report.

(e) If the holder of property presumed abandoned under this act knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(g) The initial report filed under this act shall include all items of property that would have been presumed abandoned if this act had been in effect during the ten-year period preceding its effective date.

History: En. Sec. 11, Ch. 244, L. 1963; amd. Sec. 1, Ch. 21, L. 1967; amd. Sec. 2, Ch. 226, L. 1967.

Compiler's Notes

This section was amended twice by the 1967 legislature, once by Ch. 21 and once by Ch. 226. Each act amended this section in different respects, and as the amendments do not seem in conflict with each other, the compiler has made a composite section incorporating the changes as made by both acts.

Amendments

Chapter 21, Laws 1967 substituted "every three (3) years" for "of each year" after "November 1," and "reports" for "report" preceding "of life insurance corporations" and inserted "banking and financial organizations and co-operatives" after "insurance corporations" in the first sentence and added the present second and last sentences to subsection (d).

Chapter 226, Laws 1967, inserted "Except with respect to travelers' checks and money orders," at the beginning of subsection (b)(1).

67-2212. Notice and publication of lists of abandoned property. (a) Within one hundred twenty (120) days from the filing of the report required by section 11 [67-2211], the state treasurer shall cause notice to be published at least once each week for two (2) successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to Be Owners of Abandoned Property," and shall contain:

(1) The names in alphabetical order and last known addresses, if any, or person listed in the report and entitled to notice within the county as hereinbefore specified.

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the state treasurer.

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five (65) days from the date of the second published notice, the abandoned property will be

placed not later than eighty-five (85) days after such publication date in the custody of the state treasurer to whom all further claims must thereafter be directed.

(c) The state treasurer is not required to publish in such notice any item of less than twenty-five dollars ($25) unless he deems such publication to be in the public interest.

(d) Within one hundred twenty (120) days from the receipt of the report required by section 11 [67-2211], the state treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars ($25) or more presumed abandoned under this act.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the state treasurer, property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice the property will be placed in the custody of the state treasurer to whom all further claims must be directed.

(f) This section is not applicable to sums payable on travelers' checks or money orders presumed abandoned under section 2 [67-2202].

History: En. Sec. 12, Ch. 244, L. 1963; amd. Sec. 3, Ch. 226, L. 1967.

Amendments

The 1967 amendment added subsection (f).

67-2213. Payment or delivery of abandoned property. Every person who has filed a report as provided by section 11 [67-2211] shall within twenty (20) days after the time specified in section 12 [67-2212] for claiming the property from the holder, or in the case of sums payable on travelers' checks or money orders presumed abandoned under section 2 [67-2202] within twenty (20) days after the filing of the report, pay or deliver to the state treasurer all abandoned property specified in this report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 12 [67-2212], or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the state treasurer, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

History: En. Sec. 13, Ch. 244, L. 1963; amd. Sec. 4, Ch. 226, L. 1967.

Amendments

The 1967 amendment inserted "or in the case of sums payable on travelers' checks or money orders presumed abandoned under section 2 [67-2202] within twenty (20) days after the filing of the report" after "from the holder" and inserted "this" after "specified in."

67-2214. Relief from liability by payment or delivery. Upon the payment or delivery of abandoned property to the state treasurer, the state shall assume custody and shall be responsible for the safekeeping

thereof. Any person who pays or delivers abandoned property to the state treasurer under this act is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the state treasurer pursuant to this act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the state treasurer shall forthwith reimburse the holder for the payment. Any holder who has paid moneys to the state treasurer pursuant to this act, and after exhausting his legal remedies, is compelled by authority of another jurisdiction to make a second payment to any other state, upon certified proof thereof and upon proof that the state treasurer was notified in writing of the claim of such other state within thirty (30) days after such claim has been asserted, the state treasurer shall refund to such holder the amount of such second payment not in excess of the amount paid to the state treasurer under this act.

History: En. Sec. 14, Ch. 244, L. 1963.

67-2215. Income accruing after payment or delivery. When property is paid or delivered to the state treasurer under this act, the owner is not entitled to receive income or other increments accruing thereafter.

History: En. Sec. 15, Ch. 244, L. 1963.

67-2216. Periods of limitation not a bar. The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this act or to pay or deliver abandoned property to the state treasurer.

History: En. Sec. 16, Ch. 244, L. 1963.

67-2217. Sale of abandoned property. (a) All abandoned property other than money delivered to the state treasurer under this act shall within one (1) year after the delivery be sold by him to the highest bidder at public sale in whatever city in the state affords in his judgment the most favorable market for the property involved. The state treasurer may decline highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

(b) Any sale held under this section shall be preceded by a single publication of notice thereof, at least three (3) weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

(c) The purchaser at any sale conducted by the state treasurer pursuant to this act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claim-

ing through or under them. The state treasurer shall execute all documents necessary to complete the transfer of title.

History: En. Sec. 17, Ch. 244, L. 1963.

67-2218. Deposit of funds. (a) All funds received under this act, including the proceeds from the sale of abandoned property under section 17 [67-2217], shall forthwith be deposited by the state treasurer in the public school fund of the state, except that the state treasurer shall retain in the agency fund an amount not exceeding twenty-five thousand dollars ($25,000) from which he shall make prompt payment of claims allowed by him as hereinafter provided. Before making the deposit he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(b) Before making any deposit to the credit of the public school fund, the state treasurer may deduct: (1) any costs in connection with sale of abandoned property, (2) any costs of mailing and publication in connection with any abandoned property, and (3) reasonable service charges.

History: En. Sec. 18, Ch. 244, L. 1963.

67-2219. Claim for abandoned property paid or delivered. Any person claiming an interest in any property delivered to the state under this act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the state treasurer.

History: En. Sec. 19, Ch. 244, L. 1963.

67-2220. Determination of claims. (a) The state treasurer shall consider any claim filed under this act and may hold a hearing and receive evidence concerning it. If a hearing is held he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

(b) If the claim is allowed, the state treasurer shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

History: En. Sec. 20, Ch. 244, L. 1963.

67-2221. Judicial action upon determinations. Any person aggrieved by a decision of the state treasurer or as to whose claim the state treasurer has failed to act within ninety (90) days after the filing of the claim, may commence an action in the district court of Lewis and Clark county to establish his claim. The proceeding shall be brought within ninety (90) days after the decision of the state treasurer or within one hundred eighty (180) days from the filing of the claim if the state treasurer fails to act. The action shall be tried de novo without a jury.

History: En. Sec. 21, Ch. 244, L. 1963.

67-2222. Election to take payment or delivery. The state treasurer, after receiving reports of property deemed abandoned pursuant to this act, may decline to receive any property reported which he deems to have a value less than the cost of giving notice and holding sale, or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates.

History: En. Sec. 22, Ch. 244, L. 1963.

67-2223. Examination of records. The state treasurer may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to this act.

History: En. Sec. 23, Ch. 244, L. 1963.

67-2224. Proceeding to compel delivery of abandoned property. If any person refuses to deliver property to the state treasurer as required under this act, he shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

History: En. Sec. 24, Ch. 244, L. 1963.

67-2225. Penalties. (a) Any person who willfully fails to render any report or perform other duties required under this act shall be punished by a fine of fifty dollars ($50) for each day such report is withheld, but not more than one thousand dollars ($1,000).

(b) Any person who willfully refuses to pay or deliver abandoned property to the state treasurer as required under this act shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or imprisonment for not more than six (6) months, or both, in the discretion of the court.

History: En. Sec. 25, Ch. 244, L. 1963.

67-2226. Rules and regulations. The state treasurer is hereby authorized to make necessary rules and regulations to carry out the provisions of this act and shall be represented in the enforcement of the provisions of this act by the special assistant attorney general in charge of escheated estates.

History: En. Sec. 26, Ch. 244, L. 1963.

67-2227. Effect of laws of other states. This act shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to the effective date of this act.

History: En. Sec. 27, Ch. 244, L. 1963.

67-2228. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

History: En. Sec. 28, Ch. 244, L. 1963.

67-2229. Uniformity of interpretation. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 29, Ch. 244, L. 1963.

67-2230. Short title. This act may be cited as the "Uniform Disposition of Unclaimed Property Act."

History: En. Sec. 30, Ch. 244, L. 1963.

CHAPTER 23—UNIT OWNERSHIP ACT

Section 67-2301. Short title.
67-2302. Definition of terms.
67-2303. Application of act—recording of declaration.
67-2304. Status of the unit.
67-2305. Ownership of unit.
67-2306. Common elements—interest of unit owner.
67-2307. Common elements—undivided interest not separated from unit.
67-2308. Common profits and expenses.
67-2309. Certain work prohibited.
67-2310. Common elements—use by unit owner.
67-2311. Maintenance, repair and replacement of common elements.
67-2312. Waiver of use of common elements—abandonment of unit.
67-2313. Compliance with covenants—bylaws—administrative provisions.
67-2314. Contents of declaration.
67-2315. Preliminary declaration.
67-2316. Name of property—similarity prohibited.
67-2317. Approval of declaration before recording.
67-2318. Recording of declaration.
67-2319. Floor plans recorded with declaration.
67-2320. Bylaws—adoption—recording—amendment.
67-2321. Contents of bylaws.
67-2322. Contents of deed of unit.
67-2323. Blanket mortgages and other blanket liens affecting unit at time of first conveyance.
67-2324. Liens against units—release from lien—effect of part payment.
67-2325. Records of receipts and expenditures—availability for examination.
67-2326. Claim for common expenses—priority of lien—contents of claim—filing and recording.
67-2327. Unpaid common expenses—foreclosure of lien or action for money judgment.
67-2328. Foreclosure of lien for unpaid common expenses—payment of rent—appointment of receiver—bid by manager at foreclosure sale.
67-2329. Foreclosure of first mortgage or trust indenture—liability of purchaser at foreclosure sale for unpaid share of common expenses.
67-2330. Joint and several liability of grantor and grantee for unpaid common expenses.
67-2331. Insurance of building.
67-2332. Removal of property from the provisions of the Unit Ownership Act—transfer of liens.
67-2333. Obsolete property—renewal and restoration—sale—removal from provisions of the Unit Ownership Act.
67-2334. Damage to property—decision not to repair or rebuild—removal from the provisions of the Unit Ownership Act.
67-2335. Removal of property from the provisions of the Unit Ownership Act—ownership in common—liens.
67-2336. Removal of property from the provisions of the Unit Ownership Act—action for partition—disposition of net proceeds of sale.
67-2337. Removal no bar to subsequent resubmission.
67-2338. Actions.
67-2339. Change of agent for service of process.
67-2340. Separate taxation.
67-2341. Exemptions.
67-2342. Appraisal and assessment of units.

67-2301. Short title. Sections 2 to 42 [67-2302 to 67-2342] of this act may be cited as the "Unit Ownership Act."

History: En. Sec. 1, Ch. 120, L. 1965.

Title of Act

An act providing for the unit ownership of multiple-unit buildings, and to be cited as the Unit Ownership Act.

References

Thisted v. Country Club Tower Corp., 146 M 87, 405 P 2d 432.

67-2302. Definition of terms. As used in sections 2 to 42 [67-2302 to 67-2342] of this act, unless the context requires otherwise:

(1) "Association of unit owners" means all the unit owners acting as a group in accordance with the declaration and bylaws.

(2) "Building" means a multiple-unit building or buildings comprising a part of the property.

(3) "Common elements" means the general common elements and the limited common elements.

(4) "Common expenses" means:

(a) Expenses of administration, maintenance, repair or replacement of the common elements;

(b) Expenses agreed upon as common by all the unit owners; and

(c) Expenses declared common by sections 29 and 31 [67-2329 and 67-2331] of this act, or by the declaration or the bylaws of the particular condominium.

(5) "Declaration" means the instrument by which the property is submitted to the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act.

(6) "General common elements," unless otherwise provided in a declaration or by consent of all the unit owners, means:

(a) The land on which the building is located except any portion thereof included in a unit or made a limited common element by the declaration;

(b) The foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances and exits of the building;

(c) The basements, yards, gardens, parking areas and outside storage spaces;

(d) Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal and incinerating;

(e) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(f) The premises for the lodging of janitors or caretakers of the property; and

(g) All other elements of the building necessary or convenient to its existence, maintenance and safety, or normally in common use.

(7) "Limited common elements" means those common elements designated in the declaration or by agreement of all the unit owners, as reserved for the use of a certain unit or number of units, to the exclusion of the other units.

(8) "Majority" or "Majority of the unit owners," unless otherwise provided in the declaration, means the owners of more than fifty per cent (50 %) in the aggregate of the undivided ownership interests in the general common elements as the percentage of interest in such element appertaining to each unit is expressed in the declaration. Whenever a percentage of the unit owners is specified, percentage means such percentage in the aggregate of such undivided ownership.

(9) "Manager" means the manager, board of managers or other person in charge of the administration of or managing, the property.

(10) "Property" means the land, all buildings, improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which are submitted to the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act.

(11) "Recording officer" means the county officer charged with the duty of filing and recording deeds and mortgages or any other instruments or documents affecting the title to real property.

(12) "Unit" means a part of the property including one or more rooms occupying one or more floors or a part or parts thereof, intended for any type of independent use, and with a direct exit to a public street or highway or to a common area or area leading to a public street or highway.

(13) "Unit designation" means the number, letter or combination thereof designating a unit in the declaration.

(14) "Unit owner" means the person owning a unit in fee simple absolute individually or as co-owner in any real estate tenancy relationship recognized under the laws of this state.

History: En. Sec. 2, Ch. 120, L. 1965.

67-2303. Application of act—recording of declaration. In order to submit any property to the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act, the owner thereof shall record a declaration in the office of the recording officer of the county in which such property is located. The declaration shall be executed in accordance with section 14 [67-2314] of this act and acknowledged by the owner of the property.

History: En. Sec. 3, Ch. 120, L. 1965.

67-2304. Status of the unit. While the property is submitted to sections 2 to 42 [67-2302 to 67-2342] of this act, a unit in the building may be individually conveyed and encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causa, as if it were sole and entirely independent of the other units in the building of which they form a part, and the corresponding individual titles and interests shall be recordable.

History: En. Sec. 4, Ch. 120, L. 1965.

67-2305. Ownership of unit. Each unit owner shall be entitled to the exclusive ownership and possession of his unit.

History: En. Sec. 5, Ch. 120, L. 1965.

67-2306. Common elements—interest of unit owner. Each unit owner shall be entitled to an undivided interest in the common elements in the percentage expressed in the declaration. Such percentage shall be in the approximate relation that the value of the unit at the date of the declaration bears to the then combined value of all the units having an interest in the particular common elements. Value need not conform to market value. The percentage of undivided interest of each unit owner in the common elements as expressed in a declaration shall not be altered unless all unit owners having an interest in the particular common element agree thereto and record an amendment to the declaration setting forth the altered percentage of each unit owner having an interest.

History: En. Sec. 6, Ch. 120, L. 1965.

67-2307. Common elements—undivided interest not separated from unit. (1) The undivided interest in the common elements shall not be separated from the unit to which it appertains and shall be conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(2) The common elements shall remain undivided and no unit owner shall bring any action for partition or division of any part thereof, except as provided in section 36 [67-2336] of this act. Any covenant to the contrary is void.

History: En. Sec. 7, Ch. 120, L. 1965.

67-2308. Common profits and expenses. The common profits of the property shall be distributed among, and the common expenses shall be charged to, the unit owners according to the percentage of undivided interest of each in the common elements.

History: En. Sec. 8, Ch. 120, L. 1965.

67-2309. Certain work prohibited. A unit owner shall make no repair or alteration or perform any other work on his unit which would jeopardize the soundness or safety of the property, reduce the value thereof or impair any easement or hereditament unless the consent of all the other unit owners affected is first obtained.

History: En. Sec. 9, Ch. 120, L. 1965.

67-2310. Common elements—use by unit owner. Each unit owner may use the common elements in accordance with the purposes for which they are intended, but may not hinder or encroach upon the lawful rights of the other unit owners.

History: En. Sec. 10, Ch. 120, L. 1965.

67-2311. Maintenance, repair and replacement of common elements. (1) The necessary work of maintenance, repair and replacement of the common elements and additions or improvements to the common elements shall be carried out only as provided in the bylaws.

(2) The association of unit owners shall have the right, to be exercised by the manager, to have access to each unit as may be necessary for the maintenance, repair or replacement of the common elements, or

to make emergency repairs therein necessary for the public safety or to prevent damage to the common elements or to another unit.

History: En. Sec. 11, Ch. 120, L. 1965.

67-2312. Waiver of use of common elements—abandonment of unit. No unit owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit.

History: En. Sec. 12, Ch. 120, L. 1965.

67-2313. Compliance with covenants — bylaws — administrative provisions. Each unit owner shall comply with the bylaws and with the administrative rules and regulations adopted pursuant thereto, and with the covenants, conditions and restrictions in the declaration or in the deed to his unit. Failure to comply therewith shall be grounds for an action maintainable by the association of unit owners or by an aggrieved unit owner.

History: En. Sec. 13, Ch. 120, L. 1965.

67-2314. Contents of declaration. A declaration shall contain:

(1) A description of the land.

(2) The name by which the property shall be known and a general description of the building, including the number of stories and basements, the number of units and the principal materials of which it is constructed.

(3) The unit designation, location, approximate area of each unit and any other data necessary for proper identification.

(4) A description of the general common elements and the percentage of the interest of each unit owner therein.

(5) A description of the limited common elements, if any, stating to which units their use is reserved and in what percentage.

(6) A statement of the use for which the building and each of the units is intended.

(7) The name of a person to receive service of process in the cases provided in section 38 [67-2338] of this act, and the residence or place of business of such person which shall be within the county in which the property is located.

(8) Any other details regarding the property that the person executing the declaration considers desirable.

History: En. Sec. 14, Ch. 120, L. 1965.

67-2315. Preliminary declaration. A preliminary declaration, setting forth as many of the particulars required by section 14 [67-2314] of this act as may then be practicable, may be recorded before construction of the building described in the declaration is completed. The preliminary declaration shall not relieve the owner from the necessity of filing the declaration as required by section 14 [67-2314] of this act.

History: En. Sec. 15, Ch. 120, L. 1965.

67-2316. Name of property—similarity prohibited. No property shall bear a name using a word which is the same as, similar to or pronounced the same as, a word in the name of any other property or subdivision in the same county, except for the words "apartment," "motel," "building," "court," "place," or similar words.

History: En. Sec. 16, Ch. 120, L. 1965.

67-2317. Approval of declaration before recording. Before a declaration may be recorded, it must be approved by the county assessor of the county in which the property is located. No declaration shall be approved unless:

(1) The name is proper so as to comply with section 16 [67-2316] of this act; and

(2) All taxes and assessments due and payable have been paid.

History: En. Sec. 17, Ch. 120, L. 1965.

67-2318. Recording of declaration. When a declaration is made and approved as required, it shall, upon the payment of the fees provided by law, be recorded by the recording officer. The fact of recording and the date thereof shall be entered thereon. At the time of recording a declaration, the person offering it for record shall also file an exact copy, certified by the recording officer to be a true copy thereof, with the county assessor.

History: En. Sec. 18, Ch. 120, L. 1965.

67-2319. Floor plans recorded with declaration. Floor plans of the building described in a declaration shall be recorded simultaneously with the declaration. The floor plans shall show the layout of each unit including the unit designation, location and dimensions of each unit and the common areas to which each has access. There shall be attached to the floor plans a statement of the registered architect or registered professional engineer who prepared the floor plans, certifying that the plans fully and accurately depict the layout of the units and floors of the building and the date construction of the building was completed.

History: En. Sec. 19, Ch. 120, L. 1965.

67-2320. Bylaws—adoption—recording—amendment. (1) The unit owners of each property shall adopt bylaws to govern the administration of the property.

(2) A copy of the bylaws, certified by the presiding officer and secretary of the association, shall be recorded simultaneously with the declaration of the property to which the bylaws relate.

(3) An amendment of the bylaws shall not be effective unless approved by seventy-five per cent (75 %) of the unit owners and until a copy of the bylaws, as amended, certified by the presiding officer and secretary of the association of unit owners, is recorded.

History: En. Sec. 20, Ch. 120, L. 1965.

67-2321. Contents of bylaws. The bylaws shall provide for:

(1) The election from among the unit owners of a board of directors, the number of persons constituting the board, and that the terms of at

least one-third (1/3) of the directors shall expire annually; the powers and duties of the board; the compensation, if any, of the directors; the method of removal from office of the directors; and whether or not the board may engage the services of a manager or managing agent.

(2) The method of calling meetings of the unit owners and the percentage, if other than a majority as defined by subsection (8) of section 2 [67-2302] of this act, that shall constitute a quorum.

(3) The election of a chairman, a secretary and a treasurer.

(4) The maintenance, upkeep and repair of the common elements and payment for the expense thereof including the method of approving payment vouchers.

(5) The employment of personnel necessary for the maintenance, upkeep and repair of the common elements.

(6) The manner of collecting from the unit owners their share of the common expenses.

(7) The method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common elements.

(8) Such restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not included in the declaration, as are designed to prevent unreasonable interference with the use of their respective units and of the common elements by the several unit owners.

(9) The method of amending the bylaws subject to subsection (3) of section 20 [67-2320] of this act.

History: En. Sec. 21, Ch. 120, L. 1965.

67-2322. Contents of deed of unit. The deed of a unit shall contain:

(1) A description of the land, the name of the property, and the recording index numbers and date of recording of the declaration.

(2) The unit designation of the unit.

(3) The use for which the unit is intended.

(4) The percentages of undivided interest in the common elements appertaining to the unit.

(5) Any further details the grantor and grantee may consider desirable.

History: En. Sec. 22, Ch. 120, L. 1965.

67-2323. Blanket mortgages and other blanket liens affecting unit at time of first conveyance. At the time of the first conveyance of each unit following the recording of the declaration, every mortgage and other lien affecting such unit including the undivided interest of the unit in the common elements, shall be paid and satisfied of record, or the unit being conveyed and its interest in the common elements shall be released therefrom by partial release duly recorded.

History: En. Sec. 23, Ch. 120, L. 1965.

67-2324. Liens against units—release from lien—effect of part payment. (1) Subsequent to recording a declaration and while the property remains subject to sections 2 to 42 [67-2302 to 67-2342] of this act, no lien

shall arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against each unit and the undivided interest in the common elements appertaining thereto, in the same manner and under the same conditions as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

(2) No labor performed or materials furnished with the consent or at the request of a unit owner, his agent, contractor or subcontractor, shall be the basis for the filing of a mechanic's or materialman's lien against the unit of any other unit owner not consenting to or requesting the labor to be performed or the materials to be furnished, except that consent shall be considered given by the owner of any unit in the case of emergency repairs thereto performed or furnished with the consent or at the request of the manager.

(3) If a lien becomes effective against two or more units, the owner of each unit subject to such a lien shall have the right to have his unit released from the lien by payment of the amount of the lien attributable to his unit. The amount of the lien attributable to a unit and the payment required to satisfy such a lien, in the absence of agreement, shall be determined by application of the percentage established in the declaration. Such partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any unit and the undivided interest in the common element appertaining thereto not so released by payment, satisfaction or discharge.

History: En. Sec. 24, Ch. 120, L. 1965.

67-2325. Records of receipts and expenditures—availability for examination. The manager shall keep detailed accurate records in chronological order, of the receipts and expenditures affecting the common elements, itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for examination by the unit owners at convenient hours of week days.

History: En. Sec. 25, Ch. 120, L. 1965.

67-2326. Claim for common expenses—priority of lien—contents of claim—filing and recording. (1) Whenever an association of unit owners, acting through its manager, furnishes to a unit any services, labor or material lawfully chargeable as common expenses, the association of unit owners, upon complying with subsection (2) of this section, shall have a lien upon the individual unit and the undivided interest in the common elements appertaining to such unit for the reasonable value of such common expenses and the lien shall be prior to all other liens or encumbrances upon the unit except:

(a) Tax and assessment liens, and

(b) A first mortgage or trust indenture of record.

(2) An association of unit owners claiming the benefits of subsection (1) of this section shall record in the county in which the unit or some part thereof is located a claim containing a true statement of the account

due for such common expenses after deducting all just credits and offsets; the name of the owner of the unit, or reputed owner, if known; a description of the property where the common expenses were furnished and the designation of the unit, sufficient for identification.

(3) The claim shall be verified by the oath of some person having knowledge of the facts and shall be filed with and recorded by the recording officer in the book kept for the purpose of recording liens filed under section 45-501. The record shall be indexed as deeds and other conveyances are required by law to be indexed.

History: En. Sec. 26, Ch. 120, L. 1965.

67-2327. Unpaid common expenses—foreclosure of lien or action for money judgment. The proceedings to foreclose liens created by section 26 [67-2326] of this act shall conform as nearly as possible to the proceedings to foreclose liens created by section 45-501. The lien may be enforced by the manager acting on behalf of the association of unit owners. An action to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the lien securing the claim for common expenses.

History: En. Sec. 27, Ch. 120, L. 1965.

67-2328. Foreclosure of lien for unpaid common expenses—payment of rent—appointment of receiver—bid by manager at foreclosure sale. In any foreclosure suit against a unit, the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the rent. The manager, acting on behalf of the unit owners, shall have power, unless prohibited by the declaration, to bid in the unit at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

History: En. Sec. 28, Ch. 120, L. 1965.

67-2329. Foreclosure of first mortgage or trust indenture—liability of purchaser at foreclosure sale for unpaid share of common expenses. Where the purchaser of a unit obtains title to the unit as a result of foreclosure of the first mortgage or trust indenture, such purchaser, his successors and assigns, shall not be liable for any of the common expenses chargeable to such unit which became due prior to the acquisition of title to such unit by such purchaser. Such unpaid share of common expenses shall be a common expense of all the unit owners including such purchaser, his successors and assigns.

History: En. Sec. 29, Ch. 120, L. 1965.

67-2330. Joint and several liability of grantor and grantee for unpaid common expenses. In a voluntary conveyance of a unit; the grantee shall be jointly and severally liable with the grantor for all unpaid charges against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the amounts paid by the grantee therefor. However,

upon request of a prospective purchaser the manager shall make and deliver a statement of the unpaid charges against the prospective grantor, and the grantee in that case shall not be liable for, nor shall the unit when conveyed be subject to, a lien filed thereafter for any unpaid charges against the grantor in excess of the amount therein set forth.

History: En. Sec. 30, Ch. 120, L. 1965.

67-2331. Insurance of building. The manager, as trustee for the unit owners, shall, if required by the declaration, the bylaws or by a majority of the unit owners, insure the building against loss or damage by fire and such other hazards as shall be required, without prejudice to the right of each unit owner to insure his own unit for his own benefit. The premiums for such insurance on the building are common expenses.

History: En. Sec. 31, Ch. 120, L. 1965.

67-2332. Removal of property from the provisions of the Unit Ownership Act—transfer of liens. (1) All of the unit owners may remove a property from the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act by executing and recording an instrument to that effect if the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the undivided interest of the unit owner in the property after removal from the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act.

(2) The tax collector for any taxing unit having a lien, for taxes or assessments, shall have authority to consent to such a transfer of any tax or assessment lien.

History: En. Sec. 32, Ch. 120, L. 1965.

67-2333. Obsolete property—renewal and restoration—sale—removal from provisions of the Unit Ownership Act. Ninety per cent (90 %) of the unit owners may agree that the property is obsolete in whole or in part and whether or not it shall be renewed and restored or sold and the proceeds of sale distributed. If ninety per cent (90 %) of the unit owners agree to renew and restore the property, the expense thereof shall be paid by all the unit owners as common expenses. If ninety per cent (90 %) of the unit owners agree to sell the property, the property shall be considered removed from the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act.

History: En. Sec. 33, Ch. 120, L. 1965.

67-2334. Damage to property—decision not to repair or rebuild—removal from the provisions of the Unit Ownership Act. If within sixty days (60) after the date of the damage to or destruction of all or part of the property, the association of unit owners does not decide to repair, reconstruct or rebuild, the property shall be considered removed from the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act.

History: En. Sec. 34, Ch. 120, L. 1965.

67-2335. Removal of property from the provisions of the Unit Ownership Act—ownership in common—liens. If the property is removed from

the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act, as provided by sections 32, 33 and 34 [67-2332, 67-2333 and 67-2334] of this act, the property shall be considered owned in common by all the unit owners. The percentage of undivided interest of each unit owner in the property owned in common shall be the same as the percentage of undivided interest previously owned by such owner in the common elements. Liens affecting any unit shall be liens, in accordance with the then existing priorities, against the undivided interest of the unit owner in the property owned in common.

History: En. Sec. 35, Ch. 120, L. 1965.

67-2336. Removal of property from the provisions of the Unit Ownership Act—action for partition—disposition of net proceeds of sale. If the property is removed from the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act, as provided in sections 32, 33 and 34 [67-2332, 67-2333 and 67-2334] of this act, it shall be subject to an action for partition at the suit of any unit owner. The net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among the unit owners in proportion to their respective undivided interests after first paying out of the respective shares of the unit owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each unit owner.

History: En. Sec. 36, Ch. 120, L. 1965.

67-2337. Removal no bar to subsequent resubmission. The removal of the property from the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act, shall in no way bar its resubmission.

History: En. Sec. 37, Ch. 120, L. 1965.

67-2338. Actions. Actions may be brought on behalf of two or more of the unit owners, as their respective interests may appear, by the manager with respect to any cause of action relating to the common elements or more than one unit. Service of process on two or more unit owners, in any action relating to the common elements or more than one unit, may be made on the person designated in the declaration to receive service of process or in duplicate on the recording officer of the county in which the declaration is filed. The recording officer shall promptly send a copy of the document served by certified or registered mail to the person designated in the declaration to receive service of process. At the time of service on the recording officer, the serving party shall pay to the recording officer a fee of ten dollars ($10), which shall be a taxable disbursement.

History: En. Sec. 38, Ch. 120, L. 1965.

67-2339. Change of agent for service of process. If the association of unit owners wishes to designate a person other than the one named in the declaration to receive service of process in the cases provided in section 38 [67-2338] of this act, it shall record an amendment to the declaration. The amendment shall be certified by the presiding officer and the secretary of the association of unit owners, and shall state the name of the successor with his residence or place of business as required by

subsection (7) of section 14 [67-2314] of this act and that the person named in the amendment was designated by resolution duly adopted by the association of unit owners.

History: En. Sec. 39, Ch. 120, L. 1965.

67-2340. Separate taxation. (1) Each unit with its percentage of undivided interest in the common elements shall be considered a parcel of real property subject to separate assessment and taxation by any taxing unit in like manner as other parcels of real property. Neither the building, the property nor any of the common elements shall be considered a parcel for purposes of taxation.

(2) In determining the true cash value of a unit with its undivided interest in the common elements, the county assessor may use the percentage of undivided interest in the common elements appertaining to a unit as expressed in the declaration.

History: En. Sec. 40, Ch. 120, L. 1965.

67-2341. Exemptions. Exemptions from executions and real property taxes apply to the owner of each unit or to the individual units as the case may be.

History: En. Sec. 41, Ch. 120, L. 1965.

67-2342. Appraisal and assessment of units. The state board of equalization shall have the authority to make rules and regulations prescribing methods best calculated to secure uniformity according to law in the appraisal and assessment of units constituting part of a property submitted to the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act.

History: En. Sec. 42, Ch. 120, L. 1965.

TITLE 68—PUBLIC EMPLOYEES' RETIREMENT ACT

Chapter 2. Retirement system created—who are members, 68-203.
3. Contracts between municipal corporations, counties and public agencies, 68-301.
4. Cost of service, how borne—change of status—membership—retirement fund, 68-405.
5. Board of administration—powers and duties, 68-501.
7. Management of retirement fund, 68-701 to 68-710.
8. Retirement—compulsory—voluntary, 68-801.
9. Service and disability retirement allowances, 68-901.
10. Reinstatement—reduction of allowance—optional modification of allowances, 68-1001, 68-1004.
11. Death benefits, 68-1101.
13. Miscellaneous provisions, 68-1307.
14. Game wardens' retirement system, 68-1401 to 68-1429.

CHAPTER 2—RETIREMENT SYSTEM CREATED—WHO ARE MEMBERS

Section 68-203. Who are ineligible to membership in system.

68-203. Who are ineligible to membership in system. The following employees shall not become members of the retirement system:

(a) to (j). * * * [Same as parent volume.]

(k) Employees of county hospitals or county rest homes in the sixth and seventh class counties unless they elect to file with the board of administration an election in writing to become members.

History: En. Sec. 5, Ch. 212, L. 1945; amd. Sec. 2, Ch. 297, L. 1947; amd. Sec. 3, Ch. 92, L. 1955; amd. Sec. 2, Ch. 246, L. 1959; amd. Sec. 1, Ch. 150, L. 1967.

Amendments

The 1967 amendment added subdivision (k).

Effective Date

Section 2 of Ch. 150, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 24, 1967.

CHAPTER 3—CONTRACTS BETWEEN MUNICIPAL CORPORATIONS, COUNTIES AND PUBLIC AGENCIES

Section 68-301. Contracts with municipal corporations—election by employee to participate.

68-301. Contracts with municipal corporations—election by employee to participate. After receiving from the board of administration, a quotation of the approximate contribution provided for in section 68-602, any municipal corporation in the state may participate in the public employees' retirement system, making its employees members of said system, by contract entered into between the legislative body of said municipal corporation and the board of administration of the said retirement system, subject to the provisions of this act. Said contract may include any provisions consistent with this act, necessary in the administration of the retirement system as it affects said employees and municipal corporation.

The approval and termination of said contract shall be subject to the following provisions, in addition to the other provisions of this act:

(a) to (c). * * * [Same as parent volume.]

(d) Any employee who has been in the employment of an incorporated city or town of this state continuously for a period of at least two (2) years, and which incorporated city or town is not participating in the public employees' retirement system of this state, may advise the legislative body of the city or town, in writing, that he wishes to participate in such system. The legislative body shall, within thirty (30) days after receipt of such written request, adopt the resolution of intention and take such other action as provided for in subsection (a) of this act.

History: En. Sec. 6, Ch. 212, L. 1945; amd. Sec. 1, Ch. 119, L. 1965.

Amendment

The 1965 amendment added subsection (d).

CHAPTER 4—COST OF SERVICE, HOW BORNE—CHANGE OF STATUS—MEMBERSHIP—RETIREMENT FUND

Section 68-405. Fund abolished.

68-405. Fund abolished. The "public employees' retirement fund" is hereby abolished. All contributions paid into the retirement system as the employer agency portion from the state, counties, cities, towns, school districts or other public agencies or political subdivisions shall constitute a pooled or mingled account in the agency fund for payment of all claims made and approved. Whenever the words "retirement fund" appear in this act they shall be taken to mean the public employees' retirement account in the agency fund.

History: En. Sec. 13, Ch. 212, L. 1945; amd. Sec. 4, Ch. 297, L. 1947; amd. Sec. 197, Ch. 147, L. 1963.

Amendment

The 1963 amendment completely rewrote this section. For previous text, see parent volume.

CHAPTER 5—BOARD OF ADMINISTRATION—POWERS AND DUTIES

Section 68-501. Board of administration.

68-501. Board of administration. The board of administration shall consist of five (5) members appointed by the governor, three (3) of which members shall be public employees and shall be members of the retirement system, and two (2) of which shall be members at large. Terms of office shall be for five (5) years provided, however, that those first appointed after this act takes effect shall be for terms, respectively, of one (1), two (2), three (3), four (4), and five (5) years but their successors shall hold office for terms of five (5) years; provided not more than one (1) employee member of the retirement board shall be an employee of the same department, bureau or agency of the state or contracting public agency. Members of the board shall be paid their actual and necessary expenses and those members of the board who are not members of the public employees' retirement system shall be entitled to receive in addition to

actual and necessary expenses compensation at the rate of ten dollars ($10.00) per day.

The attorney general is hereby designated legal counsel for the board.

(a) to (e). * * * [Same as parent volume.]

(f) Time during which a member is absent from public service without compensation shall not be allowed in computing service; except that time during which a member is absent from public service by reason of having been ordered on duty with the armed forces of the United States, or by reason of voluntary service by the member in said forces or on ships operated by or for the United States government, or by members assigned directly to the Department of War or Defense for duties pursuant to the national defense efforts, having been granted a leave of absence by the agency, department of state, county or city under which said member is employed for such purpose, either during a war involving the United States as a belligerent or in any other national emergency, and for ninety (90) days thereafter shall be considered as time spent in public service, for the purpose of qualification for retirement and death benefits, but not for calculation of retirement benefits unless the member elects to contribute and contributes under the retirement system. Any member so absent and until his return within the said ninety (90) days may resign from the system. Any member so absent shall have the right to contribute to said system, either during his service with the armed forces of the United States or in the merchant marine of the United States, and ninety (90) days thereafter or upon his return to the state service, at times and in a manner fixed by the board of administration, amounts equal to the contribution which would have been made by him to the system on the basis of his compensation earnable at the commencement of his absence. If he does so contribute he shall receive credit for public service for such time in the same manner as if he had not been absent from public service. Whenever a member elects to continue his contributions, the state or the contracting city, or county or other agency shall thereupon contribute an amount equal to that which it would have contributed under section 68-1307 or under the contract between the board and the legislative body, as the case may be, if the member had not been absent from state service.

Any member so absent or any member absent from state service by reason of having been ordered by an authorized official of the state of Montana or the United States, to duties outside state service shall be paid upon his request, his accumulated contributions. Such payment shall terminate any election by said member under this section to contribute.

Time during which a member is absent from public service by reason of injury or illness determined within one (1) year after the end of such absence as arising out of and in the course of his employment, shall be considered as spent in public service, for the purpose of qualification for retirement and death benefits, but not for the calculation of retirement benefits, except as he received compensation, as defined in this act and as distinguished from disability indemnity under the Workmen's Compensation Act during the absence, and then only to the extent of compensation received.

(g) to (l). * * * [Same as parent volume.]

History: En. Sec. 14, Ch. 212, L. 1945; amd. Sec. 5, Ch. 297, L. 1947; amd. Sec. 4, Ch. 186, L. 1951; amd. Sec. 1, Ch. 224, L. 1951; amd. Sec. 1, Ch. 225, L. 1953; amd. Sec. 4, Ch. 92, L. 1955; amd. Sec. 1, Ch. 233, L. 1965.

Amendment

The 1965 amendment inserted "or by members assigned directly to the Department of War or Defense for duties pursuant to the national defense efforts, having been granted a leave of absence by the agency, department of state, county or city under which said member is employed for such purpose" after "United States government" in the first sentence of the first paragraph of subd. (f).

Repealing Clause

Section 2 of Ch. 233, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 233, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 8, 1965.

CHAPTER 7—MANAGEMENT OF RETIREMENT FUND

Section 68-701. Management of retirement fund.
68-702. Normal rate of contribution.
68-704. Deduction of members' contributions from state salaries.
68-705. Deduction of members' contributions from city payrolls.
68-706. Voluntary additional contributions by member.
68-707. Annual membership fee.
68-708. Withdrawal of contributions by member terminating service before retirement.
68-709. Redeposit of withdrawn contributions—reinstatement of membership.
68-710. Dormant accounts transferred to pension accumulation fund.

68-701. Management of retirement fund. The retirement fund shall be managed as follows:

(a) The board of administration shall have exclusive control of the administration of said fund except as otherwise provided.

(b) The said fund shall be invested by the state board of land commissioners as part of the long term investment fund.

(c) The board of administration shall deposit monthly in the state treasury all amounts received by it as provided in this section and section 68-1307.

(d) The state treasurer shall be custodian of the retirement fund, subject to the exclusive control of the board of administration as to the administration thereof and the state board of land commissioners as to the investment thereof. All payments from said fund shall be made by him only upon vouchers signed by two (2) board members designated by the board of administration. A duly attested copy of a resolution of the board of administration designating such persons and bearing on its face specimen signatures of such persons shall be filed with the treasurer as his authority for making payments upon such vouchers. No voucher shall be drawn unless it has previously been authorized by resolution of the board of administration.

(e) Interest earned on any cash deposit in a bank by the state treasurer and income on other assets constituting a part of the said fund shall be paid into said fund as received. Income, of whatever nature, earned on the retirement fund during any fiscal year, in excess of the interest credited to contributions during said year shall be retained in said fund

as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies.

(f) Except as herein provided, no member and no employee of the board of administration shall have any interest direct, or indirect, in the making of any investment, or in the gains or profits accruing therefrom. And no member or employee of the said board directly or indirectly, for himself or as an agent or partner of others, shall borrow any of its funds or deposits, nor shall any such member or employee in any manner use the same except to make such current and necessary payments as are authorized by said board; nor shall any member or employee of said board become an endorser or surety as to, or in any manner an obligor for investments by the board.

History: En. Sec. 18, Ch. 212, L. 1945; amd. Sec. 6, Ch. 297, L. 1947; amd. Sec. 2, Ch. 176, L. 1953; Sec. 5, Ch. 92, L. 1955; amd. Sec. 3, Ch. 246, L. 1959; amd. Sec. 1, Ch. 222, L. 1967; amd. Sec. 1, Ch. 227, L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 222 and once by Ch. 227. Neither amendatory act mentioned nor, with a minor exception, incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating the changes made by both acts.

Amendments

Chapter 222, Laws 1967, corrected a minor typographical error in subdivision (f) and made other changes described in the amendment notes to secs. 68-702 to 68-710.

Chapter 227, Laws 1967, corrected a minor typographical error in subdivision (f) and redesignated former subdivisions (g) to (o) as separate sections.

68-702. Normal rate of contribution. The normal rate of contribution of all members shall be equal to five and seventy-five one hundredths per cent (5.75%) of the gross compensation earned.

History: En. Sec. 18 (g), Ch. 212, L. 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 (g), R. C. M. 1947; Sec. 2, Ch. 176, L. 1953; Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch. 246, L. 1959; redes. 68-702, Sec. 1, Ch. 222, L. 1967; amd. Sec. 1, Ch. 227, L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 222 and once by Ch. 227. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section incorporating the changes made by both amendatory acts.

Amendments

Chapter 222, Laws 1967, redesignated this section as 68-702.

Chapter 227, Laws 1967, completely rewrote this section. For previous version, see subdivision (g), sec. 68-701, parent volume.

68-703. Repealed—Chapter 227, Laws of 1967.

Repeal

This section (Sec. 18 (h), Ch. 212, L. 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 (h), R. C. M. 1947; Sec. 2, Ch. 176, L. 1953; Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch. 246, L. 1959; Sec. 68-703 as redes. by Sec. 1, Ch. 222, L. 1967), relating to the amount receivable on retirement, was repealed by its omission from the amendment of sec. 68-701 made by Sec. 1, Ch. 227, L. 1967. For present law, see sec. 68-901.

68-704. Deduction of members' contributions from state salaries. The board of administration shall certify to the head of each office or department of the state and to the registrar of the university the normal rate of contribution as provided in this act for each member in such office, department, or the university, respectively. The head of each office or department of the state shall apply such rate of contribution to the com-

pensation of each member, and shall certify to the state auditor on each and every payroll the amount to be contributed and shall furnish immediately to the board of administration a copy of each and every such payroll; and each such amount shall be deducted by the head of each office or department and shall be remitted to the board. The registrar of the university shall apply the rate of contribution certified to him by the board to the compensation of each member employed by the university and the contributions so determined shall be deducted by the registrar of the university from the compensation of each such member; each such amount shall be remitted to the board and the registrar of the university shall furnish to the board a copy of each and every salary roll and payroll from which such amounts have been deducted. Each contribution deducted and remitted to the board shall be credited by the board, together with regular interest, to an individual account of the member for whom the contribution was made. Payment of salaries or wages less such contribution shall be full and complete discharge and acquittance of all claims and demands whatsoever for the service rendered by members during the period covered by such payment, except their claims to the benefits to which they may be entitled under the provisions of this act.

History: En. Sec. 18 (i), Ch. 212, L. 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 (i), R. C. M. 1947; Sec. 2, Ch. 176, L. 1953; amd. Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch. 246, L. 1959; amd. & redes. 68-704, Sec. 1, Ch. 222, L. 1967; redes. 68-701 (h), Sec. 1, Ch. 227, L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 222 and once by Ch. 227. Neither amendatory act mentioned nor incorporated the changes made by the other. The only apparent conflict between the two amendatory acts is in the number assigned to the section; the compiler has followed Ch. 222 in this respect since that chapter contained a comprehensive renumbering of the entire chapter. This section also contains the other amendment made by Ch. 222, Laws 1967.

Amendments

Chapter 222, Laws 1967, redesignated this section as 68-704 and deleted the words "From and after July 1, 1955" at the beginning of the section.

Chapter 227, Laws 1967, redesignated this section as subdivision (h), section 68-701.

68-705. Deduction of members' contributions from city payrolls. The board of administration shall certify to the city clerk, or other officer designated by the legislative body, of each contracting city the rate of contribution as provided in this act for each member included under the retirement system respectively. The city clerk, or other officer, shall apply the rate of contribution certified to him by the board to the compensation of each member included in the retirement system and the contribution so determined shall be deducted by the city clerk, or other officer, from the compensation of each such member; each such amount shall be remitted to the board and the city clerk or other officer, shall furnish to the board a copy of each and every salary roll and payroll from which such amounts have been deducted. Each contribution deducted and remitted to the board shall be credited by the board, together with regular interest, to an individual account of the member for whom the contribution was made. Payment of salaries or wages less such contribution shall be full and complete discharge and acquittance of all claims to the benefits to which they may be entitled under the provisions of this act.

History: En. Sec. 18 (j), Ch. 212, L. 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 (j), R. C. M. 1947; Sec. 2, Ch. 176, L. 1953; amd. Sec. 5, Ch. 92, L. 1955; Sec.

3, Ch. 246, L. 1959; amd. & redes. 68-705, Sec. 1, Ch. 222, L. 1967; redes. 68-701 (i), Sec. 1, Ch. 227, L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 222 and once by Ch. 227. Neither amendatory act mentioned nor incorporated the changes made by the other. The only apparent conflict between the two amendatory acts is in the numbering of the section; the compiler has followed Ch. 222 in this respect since that chapter contained a comprehensive renumbering of the entire chapter. This section also contains the other amendment made by Ch. 222, Laws 1967.

Amendments

Chapter 222, Laws 1967, redesignated this section as 68-705 and deleted the words "From and after July 1, 1955" at the beginning of the section.

Chapter 227, Laws 1967, redesignated this section as subdivision (i) of section 68-701.

68-706. Voluntary additional contributions by member. Subject to the rules and regulations to be established and promulgated by the board of administration, any member may elect to contribute at rates in excess of those provided for in sections 68-704 and 68-705, for the purpose of providing additional benefits, but the exercise of this privilege by a member shall not place on the state or contracting city any additional financial obligation. The provisions of subdivisions (f) and (g) of section 68-203 shall apply also to additional contributions. The board, upon application shall furnish to such member information concerning the nature and amount of additional benefits to be provided by such additional contributions.

History: En. Sec. 18 (k), Ch. 212, L. 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 (k), R. C. M. 1947; Sec. 2, Ch. 176, L. 1953; Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch. 246, L. 1959; amd. & redes. 68-706, Sec. 1, Ch. 222, L. 1967; amd. & redes. 68-701 (j), Sec. 1, Ch. 227, L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 222 and once by Ch. 227. Both amendments involved redesignation of the section and the change of internal references to other sections. Since the changes made by Ch. 222 were part of a comprehensive renumbering of the entire chapter, the compiler has included only the changes made by that chapter.

Amendments

Chapter 222, Laws 1967, redesignated this section as 68-706; changed the reference to other sections to correspond with their redesignation; and made another minor change.

Chapter 227, Laws 1967, redesignated this section as subdivision (j) of section 68-701 and changed a reference to other subdivisions to correspond with their redesignation.

68-707. Annual membership fee. In addition to the contributions hereinbefore provided to be paid by employees who are members of the retirement system created by this act, every such employee shall pay an annual membership fee of one dollar ($1) which amount, together with other moneys appropriated for that purpose, shall be used for the support of the board of administration.

History: En. Sec. 18 (l), Ch. 212, L. 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 (l), R. C. M. 1947; Sec. 2, Ch. 176, L. 1953; Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch. 246, L. 1959; redes. 68-707, Sec. 1, Ch. 222, L. 1967; redes. 68-701 (k), Sec. 1, Ch. 227, L. 1967.

Compiler's Notes

There is conflict between the redesignations of this section by Chapters 222 and 227, Laws 1967. Since the redesignation made by Chapter 222 is part of a comprehensive renumbering of the entire chapter, the compiler has used that redesignation.

Amendments

Chapter 222, Laws 1967, redesignated this section as 68-707.

Chapter 227, Laws 1967, redesignated this section as subdivision (k) of section 68-701.

68-708. Withdrawal of contributions by member terminating service before retirement. Should the state service of a member with less than ten (10) years of service be discontinued otherwise than by death or retirement, he shall after the date of discontinuance, be paid such part of his contributions as he demands. The board may, in its discretion, withhold for not more than one (1) year after a member last rendered state service, all or part of his contributions if after a previous discontinuance of state service he withdrew all or part of his contributions and failed to redeposit such withdrawn amount in the retirement fund as provided in section 68-709.

Any member with ten (10) or more years of service, whose service is discontinued otherwise than by death or retirement, shall have the right to elect within ninety (90) days after such termination of service, whether to allow his accumulated contributions to remain in the retirement fund or to withdraw his accumulated contributions. Upon the qualification for retirement by reason of age or disability of a member with ten (10) or more years of service who has elected to allow his accumulated contributions to remain in the retirement fund after his service has been discontinued otherwise than by death or retirement, he shall receive a retirement allowance computed in accordance with the provisions of section 68-901.

History: En. Sec. 18 (m), Ch. 212, L. 1945; amd. Sec. 6, Ch. 297, L. 1947; Sec. 68-701 (m), R. C. M. 1947; Sec. 2, Ch. 176, L. 1953; amd. Sec. 5, Ch. 92, L. 1955; amd. Sec. 3, Ch. 246, L. 1959; amd. & redes. 68-708, Sec. 1, Ch. 222, L. 1967; amd. & redes. 68-701 (1), Sec. 1, Ch. 227, L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 222 and once by Ch. 227. Neither amendatory act mentioned nor incorporated the changes made by the other. The two amendments do not appear to conflict except in the numbering of the section and in form of references to other sections; in this respect, the compiler has used the amendments made by Chapter 222 since they are part of a comprehensive renumbering of the entire chapter. This section also incorporates the other amendments made by Chapter 222.

Amendments

Chapter 222, Laws 1967, redesignated this section as 68-708; changed an internal reference in accord with another redesignation made by the act; deleted "From and after July 1, 1955" at the beginning of the section; inserted "with less than ten (10) years of service" after "member" in the first sentence; added "or to withdraw his accumulated contributions" at the end of the first sentence of the second paragraph; inserted "with ten (10) or more years of service" after "disability of a member" in the second sentence of the second paragraph; inserted "after his service has been discontinued otherwise than by death or retirement" after "retirement fund" in the second sentence of the second paragraph; inserted "computed" after "retirement allowance" in the final clause of the section; and deleted "exclusive of subparagraph (g) of section 68-901" at the end of the section.

Chapter 227, Laws 1967, redesignated this section as subdivision (1) of section 68-701 and changed internal references to correspond with other redesignations made by the act.

68-709. Redeposit of withdrawn contributions—reinstatement of membership. Any member may redeposit in the retirement fund, in one (1) sum or in not to exceed twelve (12) monthly or twenty-four (24) semimonthly payments, an amount equal to that which he withdrew therefrom at the last termination of his membership, subject to minimum monthly or semimonthly payments as fixed by the board of administration. If a member, upon re-entering the retirement system after a termination of his membership, does not elect to make or, having so elected, subsequently does not make such redeposit, he shall re-enter as a new

member without credit for any service except the prior service credited to him before said termination, and the rate of his contribution for future years shall be the normal rate provided for in this act at his age of re-entrance; otherwise his rate of contribution for future years shall be the same as his rate prior to the last termination of his membership, and his membership shall be the same as if unbroken by such last termination. Regardless of whether such redeposit is made, the documents held by the retirement system as executed by said member prior to termination of membership shall be held by the system for the same purposes as prior to said termination, and beneficiaries nominated in such documents shall continue unchanged until changed as provided herein.

History: En. Sec. 18 (n), Ch. 212, L. 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 (n), R. C. M. 1947; Sec. 2, Ch. 176, L. 1953; Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch. 246, L. 1959; redes. 68-709, Sec. 1, Ch. 222, L. 1967; redes. 68-701 (m), Sec. 1, Ch. 227, L. 1967.

Compiler's Notes

There is conflict between the redesignations of this section made by Chapters 222 and 227, Laws 1967. Since Chapter 222 contains a comprehensive renumbering of the entire chapter, the compiler has adopted the redesignation made by Chapter 222.

Amendments

Chapter 222, Laws 1967, redesignated this section as 68-709.

Chapter 227, Laws 1967, redesignated this section as subdivision (m) of 68-701.

68-710. Dormant accounts transferred to pension accumulation fund. The board may in its discretion transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

History: En. Sec. 68-701 (o) by Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch. 246, L. 1959; redes. 68-710, Sec. 1, Ch. 222, L. 1967; redes. 68-701 (n), Sec. 1, Ch. 227, L. 1967.

Compiler's Notes

There is conflict between the redesignations of this section made by Chapters 222 and 227, Laws 1967. Since Chapter 222 contains a comprehensive renumbering of the entire chapter, the compiler has adopted the redesignation made by that act.

Amendments

Chapter 222, Laws 1967, redesignated this section as 68-710.

Chapter 227, Laws 1967, redesignated this section as subdivision (n), section 68-701.

CHAPTER 8—RETIREMENT—COMPULSORY—VOLUNTARY

Section 68-801. Voluntary service retirement.

68-801. Voluntary service retirement. (a) and (b). * * * [Same as parent volume.]

(c) Any person so employed shall be considered as reinstated from retirement and his retirement allowance shall be canceled forthwith. Upon subsequent retirement he shall be entitled to receive a benefit, as provided in section 68-901, which shall be based upon his creditable service accumulated at the time of his previous retirement plus any creditable service accumulated subsequent to his re-employment.

History: En. Sec. 19, Ch. 212, L. 1945; amd. Sec. 7, Ch. 297, L. 1947; amd. Sec. 5, Ch. 186, L. 1951; amd. Sec. 1, Ch. 35, L. 1955; amd. Sec. 4, Ch. 246, L. 1959; amd. Sec. 2, Ch. 227, L. 1967.

Amendments

The 1967 amendment substituted the second sentence in subsection (c) for "His individual account shall be credited with an amount which is the actuarial equivalent of his annuity at the time of such reinstatement, and his rate of contribution for future years shall be the same as if he had continued in state service during the period of his retirement. Such person shall receive credit for prior service in the same manner as if he had never been retired."

CHAPTER 9—SERVICE AND DISABILITY RETIREMENT ALLOWANCES

Section 68-901. Service retirement allowance.

68-901. Service retirement allowance. A member who has reached his sixty-fifth birthday prior to July 1, 1967 upon retirement from service is entitled to receive a service retirement allowance which shall consist of either an allowance as provided in subsections (a) through (f) of this section, or an allowance as provided in subsection (g) of this section at the option of the member:

(a). * * * [Same as parent volume.]

(b) A pension, purchased by the contributions of the state, or the contracting city, equal to one (1) that portion of the annuity purchased by the accumulated normal contributions of the member, or (2) one quarter (¼) of his average final compensation provided his total state service is at least thirty-five (35) years, otherwise, a pension which shall be one one-hundred fortieth (1/140) of his average final compensation multiplied by the number of years of state service; which ever is greater.

(c) to (f). * * * [Same as parent volume.]

(g) A member who reaches his sixty-fifth birthday on or after July 1, 1967 upon retirement from service is entitled to receive a service retirement allowance which shall consist of:

(i) A retirement allowance which shall be equal, at age sixty-five (65) to one seventieth (1/70) of his final compensation, multiplied by the number of years of service.

(ii) A member retiring prior to the age of sixty-five (65) shall be entitled to a retirement allowance which shall be the actuarial equivalent of that portion of his retirement allowance based on his credited service prior to the date of actual retirement and which would have been payable to him at age sixty-five (65).

MINIMUM GUARANTEE

(h) When a member enters the retirement system with, or without, credit for prior service, and is otherwise eligible for retirement after attaining the age of seventy (70) years, if his final compensation was such that one-half (½) thereof is in excess of the total of his retirement allowance, an additional pension for prior service sufficient to cause his retirement allowance to amount to one-half (½) of such final compensation shall be paid him on account of prior service, but in no event shall a greater additional pension be paid than will cause the total retirement allowance, exclusive of the annuity provided by his accumulated additional contributions, to amount to the sum of four hundred eighty dollars

($480) per year. The provisions of this section shall not apply to the members who are employees of a contracting city unless provided for by contract between the board and the contracting city, but if a member be employed by more than one (1) of such cities, his aggregate retirement allowances shall be taken into account in applying said provisions, and said application shall be made as if the member was employed by one or more offices or departments of the state.

DISABILITY RETIREMENT

(i) Any member who has not reached seventy (70) years of age shall be retired for disability if incapacitated for the performance of duty as the result of any injury or disease arising out of and in the course of his employment. Incapacity for performance of duty shall be determined by the board of administration of the public employees' retirement system, and said board of administration shall determine whether such incapacity is the result of injury or disease arising out of and in the course of employment. In the discharge of its duty regarding such determination, the board or any member thereof or duly authorized examiner or other duly authorized representative of the board shall have power to conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a claim for disability retirement. If the board determines on the evidence that it obtains and application filed that the disability resulted from injury or disease arising out of and in the course of employment, the said member shall be retired forthwith and be paid the benefits provided under the retirement system. Any such member incapacitated for the performance of duty by reason of a cause not included in the immediately preceding sentence, and any other member so incapacitated, regardless of the cause, shall be retired forthwith regardless of age but only after ten (10) years of service to the state, or to the contracting city.

(j) Subject to the requirements as to service and cause of disability stated in subdivision (i) of this section, and upon the application of a member or upon the application of the head of the office or department in which such member is or was last employed, or any other person on behalf of such member, while such member is in state service, within four (4) months after such member's discontinuance of state service, or while such member continuously, from the date of discontinuance of state service to the time of the application or motion, is physically or mentally incapacitated to perform his duties, may apply for, or the board of administration upon its own motion may order, a medical examination to determine the existence of such incapacity. Upon the receipt of such application, the board of administration shall order such medical examination. If the medical examination and other available information show, to the satisfaction of said board, that the member is incapacitated physically or mentally for the performance of his duties in the state service, the said board shall forthwith retire the member for disability.

The said board shall secure such medical service and advice as is necessary to carry out the purposes of this section and of sections 68-1001 through 68-1004, and shall pay for such medical services and advice such compensation as the board deems reasonable.

DISABILITY RETIREMENT ALLOWANCE

(k) Upon retirement for disability a member who has attained the age of sixty (60) years shall receive a service retirement allowance as provided by subsections (a) through (g) of this section. Upon retirement of a member for disability resulting from injury or disease arising out of and in the course of employment, such member shall receive a retirement allowance of fifty per centum (50%) of his final compensation; provided, however, that for any period of time for which the industrial accident board has awarded compensation to the member, whether or not such compensation is received in weekly payments or in a lump sum, the retirement allowance shall be twenty-five per centum (25%) of his final compensation and at the end of such period of time shall revert to fifty per centum (50%) as provided above.

(l) Every other member retired for disability shall receive a retirement allowance which shall consist of:

(i) An annuity which shall be equal to one one-hundred fortieth (1/140) of his final compensation multiplied by the number of years of state service; and

(ii) If, in the opinion of the board of administration, such disability is not due to intemperance, willful misconduct or violation of law on the part of the member, a pension paid from the contributions of the state, or of the contracting city which, together with his annuity provided by his accumulated normal contributions, shall make the retirement allowance, exclusive of the annuity provided by his accumulated additional contributions, equal to ninety per cent (90%) of one-seventieth (1/70) of his final compensation multiplied by the number of years of service credited to him. In no event, however, shall this pension exceed twenty-five per cent (25%) of his final compensation.

(iii) If, in the opinion of the board, the disability is due to intemperance, willful misconduct or violation of law, on the part of the member, and the annuity to which said member is entitled under subdivisions (k) and (l) of this section, is less than two hundred forty dollars ($240) per year, the board of administration in its discretion, may pay to said member, in one lump sum and in lieu of said annuity, his accumulated contributions.

History: En. Sec. 20, Ch. 212, L. 1945; amd. Sec. 6, Ch. 186, L. 1951; amd. Sec. 5, Ch. 246, L. 1959; amd. Sec. 1, Ch. 207, L. 1963; amd. Sec. 3, Ch. 227, L. 1967.

Amendments

The 1963 amendment inserted the designation for clause (1) of subsection (b); added clause (2) and the words "whichever is greater" to subsection (b); deleted second and third paragraphs of former subsection (h), for text of which see parent volume; and added the proviso to the second sentence of former subsection (j).

The 1967 amendment inserted "who has reached his sixty-fifth birthday prior to July 1, 1967" after "A member," at the beginning of the section and added "either an allowance as provided in subsections (a) through (f) of this section, or an allowance as provided in subsection (g) of this section at the option of the mem-

ber" after "consist of" at the end of the first paragraph; added a new subsection (g); redesignated old subsections (g) through (j) as new subsections (h) through (k); in new subsection (h), substituted "retirement allowance, an" for "pension annuity, and" after "the total of his"; deleted "a second additional pension for prior service" after "for prior service"; deleted "second" before "additional pension"; in new subdivision (j), substituted "subdivision (i)" for "subdivision (h)" after "disability stated in," and deleted "or upon application of the university, if such member is an employee of the university" after "last employed"; deleted old subdivision (k), which read, "Upon retirement for disability a member who is an employee of the university and who has attained the age of sixty (60) years, shall receive a service retirement allowance as provided in subdivisions (a), (b), and (c) of this section"; in new subdivision (k), substituted "through (g)" for "(b), (c) of this section" before "as provided by subsections (a)"; and, in subsection (1)(i), substituted "equal to one one-hundred fortieth (1/140) of his final compensation multiplied by the number of years of state service; and" for "the actuarial equivalent of his accumulated contributions at the time of his retirement; and" after "which shall be"; in subsection (1)(ii), substituted "paid from" for "purchased by" after "a pension"; deleted after "credited to him" a passage which read, "if such disability retirement allowance exceed one-fourth (1/4) of his final compensation; otherwise, (b) ninety per cent (90%) of one-seventieth (1/70) of his final compensation multiplied by the number of years of service which would be creditable to him were his service to continue until attainment by him of age sixty-five (65), but in such case the retirement allowance shall not exceed one-fourth (1/4) of such final compensation"; substituted "this pension exceed twenty-five per cent (25%) of his final compensation" for "the pension purchased by the contributions of the state or of the contracting city be more than sufficient to make the disability retirement allowance, exclusive of the annuity provided by accumulated additional contributions, exceed the service retirement allowance, exclusive of any annuity purchased by accumulated additional contributions, receivable by the member should he retire at the lowest age at which he would be eligible for service retirement" after "In no event, however, shall"; in subsection (1)(iii), deleted "(j)" after "subdivisions"; and made minor changes in punctuation.

Incapacity Not Result of Employment

Where relator suffered from diabetes mellitus, smoker's throat, and arteriosclerosis, it was not an abuse of discretion for the board of administration to find that resulting incapacity was not the result of injury or disease arising out of and in the course of his employment as a construction engineer. State ex rel. Sanders v. Hill, 141 M 558, 381 P 2d 475.

Mandamus

While mandamus may compel the board of administration to act, it may not be used to control its discretion and substitute the judgment of the court for that of the board, and refusal of the board to alter its ruling to fit the holding of the district court was not arbitrary or capricious and would not support the writ. State ex rel. Sanders v. Hill, 141 M 558, 381 P 2d 475.

CHAPTER 10—REINSTATEMENT—REDUCTION OF ALLOWANCE—OPTIONAL MODIFICATION OF ALLOWANCES

Section 68-1001. Reinstatement from disability retirement.
68-1004. Payment in case of cancellation of disability allowance.

68-1001. Reinstatement from disability retirement. (a). * * * [Same as parent volume.]

(b) In the case of such a member who is an employee of a contracting city, and who for any reason is not so reinstated or is not re-employed by said city in a position subject to the retirement system, he shall be paid the amount of his accumulated contributions at the time of his retirement for disability, with interest, less the total retirement allowance received.

(c) Should a disability beneficiary re-enter the state service and be eligible for membership in the retirement system in accordance with section 68-202, his retirement allowance shall be canceled and he shall

immediately become a member of the retirement system. Upon subsequent retirement he shall be entitled to receive a benefit, as provided in section 68-901, which shall be based upon his creditable service accumulated at the time of his previous retirement plus any creditable service accumulated subsequent to his re-employment.

History: En. Sec. 21, Ch. 212, L. 1945; amd. Sec. 6, Ch. 92, L. 1955; amd. Sec. 4, Ch. 227, L. 1967.

Amendments

The 1967 amendment, in subsection (b), substituted the passage beginning, "the amount of his accumulated contributions," for "an amount which is the actuarial equivalent of his annuity at that that time, as based on a disabled life, but said amount shall not exceed the amount of his accumulated contributions as such amount stood at the time of his retirement for disability"; in subsection (c), deleted, after "retirement system," a passage, which read, "his rate of contribution for future years being that established for his age at the time of such re-entry. His individual account shall be credited with an amount which is the actuarial equivalent of his annuity at that time, as based on a disabled life, but such amount shall not exceed the amount of his accumulated contributions as such amount stood at the time of his retirement for disability. Such member shall receive credit for prior service in the same manner as though he had never been retired for disability"; and added the last sentence of that subsection.

68-1004. Payment in case of cancellation of disability allowance. Should the retirement allowance of any disability beneficiary be canceled for any cause other than re-entrance into the state service, he shall be paid the amount of his accumulated contributions at the time of his retirement for disability, with interest, less the total retirement allowance received.

History: En. Sec. 24, Ch. 212, L. 1945; amd. Sec. 5, Ch. 227, L. 1967.

Amendments

The 1967 amendment substituted the passage beginning, "the amount of his accumulated contributions," to the end of the section, for "an amount which is the actuarial equivalent of his annuity at that time, based on a disabled life, but said amount shall not exceed the amount of his accumulated contributions as such amount stood at the time of his retirement for disability."

CHAPTER 11—DEATH BENEFITS

Section 68-1101. Death benefit.

68-1101. Death benefit. Upon the death before retirement of a member while in the state service, or within four (4) months after the discontinuance of state service, or while physically or mentally incapacitated for the performance of his duty, if such incapacity has been continuous from the discontinuance of state service, the retirement system shall be liable for a death benefit, which death benefit shall be paid to such person or other legal entity as he has nominated by written designation duly executed and filed with the retirement board or, if no beneficiary shall be nominated, then pursuant to the provisions of section 68-1201; provided, however, that death benefits shall not be payable to the beneficiary of a member who (a) has elected a joint life annuity option as provided in section 68-1005, or (b) who has received a disability retirement allowance as provided for in paragraphs (j) through (l) of section 68-901, for a period of four (4) months immediately preceding death. Such death benefit shall consist of:

(a). * * * [Same as parent volume.]

(b) An amount, provided from contributions by the state, or by a contracting city, which shall be equal to one-twelfth (1/12th) of the annual compensation earnable by the deceased during the twelve (12) months immediately preceding his death, multiplied by the number of completed years of service under the system, but not to exceed fifty per centum (50%) of such compensation.

(c) and (d). * * * [Same as parent volume.]

(e) Survivorship provision. In lieu of the benefits provided in (a) and (b) above, if the deceased member is qualified by reason of service for a retirement benefit, the beneficiary; if a natural person of legal age, may elect to receive a monthly life annuity. Said monthly life annuity is to be based on the beneficiary's attained age at the time of the deceased member's death and to be calculated from an amount equal to the required reserve for the retirement allowance earned by the deceased member to the date of his death; and provided that this provision be retroactive for all members who had an option for a lesser retirement allowance filed in the retirement system office at the time of their death.

(f) The beneficiary shall have ninety (90) days after receipt of notice from the board of administration that he is entitled to a death benefit, to make the elections provided for in paragraphs (c) and (e) above.

History: En. Sec. 26, Ch. 212, L. 1945; amd. Sec. 7, Ch. 186, L. 1951; amd. Sec. 2, Ch. 225, L. 1953; amd. Sec. 9, Ch. 92, L. 1955; amd. Sec. 2, Ch. 207, L. 1963; amd. Sec. 1, Ch. 110, L. 1965; amd. Sec. 6, Ch. 227, L. 1967.

Amendments

The 1963 amendment substituted "which death benefit shall be paid" before "such person having an insurable interest" in the first paragraph for "which if there is a surviving wife or surviving children under eighteen (18) years of age, shall be paid in monthly installments and to the surviving wife and children as presented therein; otherwise such death benefit shall be paid to his estate, or"; and inserted in the first paragraph the words "or, if no beneficiary shall be nominated, then pursuant to the provisions of section 68-1201."

The 1965 amendment substituted "or other legal entity" for "having an insurable interest in his life" following "such person" in the first paragraph; substituted "if a natural person of legal age" for "nominated by the deceased member" following "beneficiary" in the first sentence of paragraph (e); deleted "named in (e) above" following "beneficiary" at the beginning of paragraph (f); deleted "the right within" following "shall have" and substituted the clause beginning with "after receipt of" and ending with paragraphs (c) and (e) above" for a clause which read "of the member's death to elect to receive a death benefit instead of the benefit designated in (e) above" at the end of paragraph (f).

The 1967 amendment, in the first paragraph, substituted "(j)" for "(i)" before "through (l) of section 68-901"; in subparagraph (e), substituted "retirement allowance earned by the deceased member to the date of his death" for "deceased member's creditable service, together with the deceased member's accumulated contributions" after "reserve for the"; and made minor changes in punctuation.

Saving Clause

Section 7 of Ch. 227, Laws 1967 read "This act is intended to be supplementary, and is not intended to repeal sections 68-701 through 68-1101, R. C. M. 1947, or any other law relating to the Public Employees' Retirement Act."

Separability Clauses

Section 3 of Ch. 207, Laws 1963 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Section 2 of Ch. 110, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of

its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clauses

Section 4 of Ch. 207, Laws 1963 and Sec. 3 of Ch. 110, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 5 of Ch. 207, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

Section 4 of Ch. 110, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 1, 1965.

CHAPTER 13—MISCELLANEOUS PROVISIONS

Section 68-1307. Allocation of money to public employees' retirement fund—disbursement procedure—contributions under this section, how applied.

68-1307. Allocation of money to public employees' retirement fund—disbursement procedure—contributions under this section, how applied. (a) During the biennium for which appropriations of money are made by this legislative assembly, there shall be paid monthly by each department, board, commission, bureau, or other agency of the state into the public employees' retirement fund out of moneys appropriated from the state general fund, a sum equal to three and five tenths per cent (3.5%) of the total compensation paid members of the retirement system. In computing the amount of compensation upon which said three and five tenths per cent (3.5%) shall be reckoned, there shall be included a sum equal to the amount of compensation which would have been paid to members of the system who elect to continue and do continue their contributions to the system and who are absent with the armed forces of the United States, so long as such absence shall be continued.

(b) Each department, board, commission, bureau or other agency of the state shall certify to the state auditor at the end of each month the total amount of compensation paid members of the retirement system, including that which would have been paid to members who are absent in the armed forces of the United States. The state auditor shall thereupon draw a warrant upon the state treasurer for said three and five tenths per cent (3.5%) of compensation contributed by the state. Said warrant shall be drawn on funds appropriated to each department, board, commission, bureau or other agency of the state to the credit of the public employees' retirement fund and the state treasurer shall deposit the amount thereof in said retirement fund.

(c). * * * [Same as parent volume.]

(d) Each department, board, commission, bureau or other agency of the state under whose supervision there are state employees who are paid either fully or in part from federal funds, but who are not subject to the federal retirement system, shall certify to the state auditor at the end of each month the total amount of compensation paid such employees who are members of the retirement system; and the state auditor shall thereupon draw a warrant upon the state treasurer in the amount of three and five tenths per cent (3.5%) of the compensation of such employees, regardless of whether such compensation is partly or entirely derived from federal funds. Such warrant shall be drawn on funds appropriated

to such department, board, commission, bureau or other agency of the state to the credit of the public employees' retirement fund and the treasurer shall deposit the amount thereof in said retirement fund.

History: En. Sec. 35, Ch. 212, L. 1945; amd. Sec. 8, Ch. 297, L. 1947; amd. Sec. 1, Ch. 214; L. 1967.

Amendments

The 1967 amendment deleted "From and after July 1, 1947, and" before "during the biennium" at the beginning of subsection (a); and substituted "three and five tenths per cent (3.5%)" for "three per cent (3%)" wherever found in subsections (a), (b) and (d).

Repealing Clause

Section 2 of Ch. 214, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 14—GAME WARDENS' RETIREMENT SYSTEM

Section 68-1401. Definition of terms.
68-1402. State game warden defined.
68-1403. Establishment of Montana state game wardens' retirement system.
68-1404. Montana state game wardens' retirement board.
68-1405. Payments into the Montana game wardens' retirement system.
68-1406. Rules and regulations—actuarial data.
68-1407. Membership.
68-1408. State game wardens' retirement account.
68-1409. Payments by contributors.
68-1410. Contributions by the state of Montana.
68-1411. Retirement.
68-1412. Voluntary retirement.
68-1413. Retirement allowance.
68-1414. Disability retirement allowance.
68-1415. Involuntary retirement allowance.
68-1416. Refunds in case of resignation or discharge.
68-1417. Payments upon death attributable to employment.
68-1418. Payments in case of death from natural causes.
68-1419. Monthly payments of retirement allowances.
68-1420. Exemption from taxes and execution.
68-1421. Nomination of beneficiary.
68-1422. Service in the armed forces of the United States.
68-1423. Fraud—correction of errors.
68-1424. Restrictions on payments.
68-1425. Subrogation.
68-1426. Payments under other laws.
68-1427. Optional retirement allowance.
68-1428. Transfer of dormant accounts.
68-1429. State public employees' retirement system, ineligibility of member.

68-1401. Definition of terms. The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

"Accumulated deductions," the total of the amount deducted from the salary of a contributor and paid into the account, and standing to his credit in the account together with the regular interest thereon.

"Beneficiary," shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

"Retired state game warden," any person in receipt of a retirement allowance under this act.

"Board," the Montana state game wardens' retirement board.

"Contributor," any person who has accumulated deductions in the account, standing to his credit.

"Final salary," the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances and expenses, for any three (3) years of continuous service upon which contributions have been made, or, in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served.

"Actuarial equivalent," the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

"Account," the Montana state game wardens' retirement account in the agency fund.

"Involuntary retirement," a retirement not for cause and before retirement age.

"Member's annuity," payments for life derived from contributions made by the contributor.

"Optional retirement age," the age at which a contributor may retire after twenty (20) years service or more; provided that such contributor has reached the age of fifty-five (55) years.

"Retirement age," the age at which a member retires after twenty-five (25) years of creditable service as a state game warden of the Montana fish and game department; provided that all members must retire at age sixty (60).

"Retirement allowance," the state annuity plus the member's annuity.

"State annuity," payments for life derived from contributions made by the state of Montana fish and game moneys in the earmarked revenue fund.

History: En. Sec. 1, Ch. 130, L. 1963.

Title of Act

An act creating and establishing a Montana state game wardens' retirement system; defining the terms "accumulated deductions," "beneficiary," "retired state game warden," "board," "contributor," "final salary," "actuarial equivalent," "account," "involuntary retirement," "member's annuity," "optional retirement age," "retirement age," "retirement allowance," "state annuity," "state game warden"; creating a Montana state game wardens' retirement board; providing for payments into the Montana game wardens' retirement account; providing the board may establish rules and regulations for proper administration, operation and enforcement of this act; defining who shall be members of said retirement system; creating a state game wardens' retirement account; providing for contributions by members of the Montana state game wardens; providing for contributions by the state of Montana; providing for retirement, voluntary retirement, retirement allowance, disability retirement allowance, involuntary retirement allowance, refunds in case of resignation or discharge, payments upon death, payments in case of death from natural causes; providing for monthly payments of retirement allowances; providing for the exemption from taxes and execution of member's annuity; providing for the manner of designating beneficiaries; providing for service in the armed forces of the United States; prohibiting fraud and providing for the manner of correcting errors; providing for restrictions on payments to beneficiaries; providing for the subrogation of the state of Montana to the rights of the members or dependents against certain third parties; providing for payments under other laws; providing for optional retirement allowances; providing that each game warden shall be ineligible to membership in state public employees' retirement system; providing that as to constitutionality the provisions of this act are severable; providing this act shall be in full force and effect from and after its passage and approval; and repealing all acts and parts of acts in conflict herewith.

68-1402. State game warden defined. Whenever used in this act, state game warden means all state fish and game wardens hired by the state fish and game commission and shall include all warden supervisory personnel whose salaries or compensation is paid out of the Montana fish and game moneys in the earmarked revenue fund.

History: En. Sec. 2, Ch. 130, L. 1963.

68-1403. Establishment of Montana state game wardens' retirement system. A retirement system is hereby established for Montana state game wardens.

History: En. Sec. 3, Ch. 130, L. 1963.

68-1404. Montana state game wardens' retirement board. There is hereby created a Montana state game wardens' retirement board, hereinafter referred to as the "board." The board shall consist of five (5) members who shall be the same persons as those who compose the board of administration of the public employees' retirement system.

History: En. Sec. 4, Ch. 130, L. 1963.

68-1405. Payments into the Montana game wardens' retirement system. All contributions by the state fish and game moneys in the earmarked revenue fund and all contributions by the state game wardens as designated by section 1 [68-1401] above, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the board, who shall credit such payments to the Montana state game wardens' retirement account in the agency fund. Such board shall have exclusive control of the administration of such account. The state treasurer shall be custodian of the account, subject to the exclusive control of the board as to the administration thereof and the state board of land commissioners as to the investment thereof. Whenever there is on deposit in the Montana state game wardens' retirement account a sum in excess of twenty-five thousand dollars ($25,000), such excess will be invested by the state board of land commissioners as part of the long-term investment fund and any of the account less than twenty-five thousand dollars ($25,000) in amount shall be invested by the state board of land commissioners as part of the short-term investment fund when so directed by the Montana game wardens' retirement board.

History: En. Sec. 5, Ch. 130, L. 1963.

68-1406. Rules and regulations—actuarial data. The board may establish such rules and regulations as it deems necessary and is charged within the limitations of this act for its proper administration, operation and enforcement, and shall be the authority under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors and to the beneficiaries of the account, and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 130, L. 1963.

68-1407. Membership. Every state game warden, including all warden supervisory personnel, whose salary or compensation for services is paid wholly out of the Montana fish and game moneys in the earmarked revenue fund and who is assigned to law enforcement in the Montana fish and game department, shall be required to become a member of the retirement system established by this act, on July 1, 1963, and thereafter when first becoming a state game warden. Contributions by members under this act shall commence with the first payroll after July 1, 1963. If any person becomes a state game warden subsequent to July 1, 1963, or shall have been at any time heretofore a state game warden, he shall receive credit for any such service prior to July 1, 1963, upon complying with the provisions of this act. All state game wardens shall be members of the retirement system so long as actively employed in such capacity.

History: En. Sec. 7, Ch. 130, L. 1963.

68-1408. State game wardens' retirement account. There is hereby created state game wardens' retirement account in the agency fund and all moneys received under the provisions of this act shall be credited to said account. In addition thereto, all moneys any state game warden, employed as such on July 1, 1963, has heretofore paid into the public employees' retirement system, whether as a state game warden or otherwise, is hereby appropriated therefrom and credited to the account hereby created and any such state game warden shall be allowed service credit hereunder for any such previous service, including other Montana state, county or city service. The state treasurer shall, upon the passage of this act, ascertain the amount heretofore paid by state game wardens or as deputy game wardens as aforesaid and transfer the amount so paid to the account hereby created. The state examiner shall audit this transfer of funds.

History: En. Sec. 8, Ch. 130, L. 1963.

68-1409. Payments by contributors. Every member shall be required to contribute into the account a sum equal to seven per cent (7%) of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account; provided that [for] any member who contributes after twenty-five (25) years of service, the contributor's retirement allowance shall be increased in an amount as calculated on an actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his retirement.

History: En. Sec. 9, Ch. 130, L. 1963.

Compiler's Note

The compiler has inserted the bracketed word "for" in the proviso.

68-1410. Contributions by the state of Montana. (a) There shall be paid out of the Montana fish and game moneys in the earmarked revenue fund, monthly, by the state treasurer, a sum equal to seven per cent (7%) of the total amount of each Montana game wardens' retirement system member's salary, the same to be credited to the retirement account created by this act. (b) The expense of the administration of this act, exclusive of the payment of retirement allowances and other benefits shall be paid

by the state of Montana out of the fish and game moneys in the earmarked revenue fund, made on the basis of budgets submitted by the board.

History: En. Sec. 10, Ch. 130, L. 1963.

68-1411. Retirement. Any member in service who has completed at least twenty-five (25) years of creditable service, and who has reached the age of fifty-five (55) years, may retire on service retirement allowance upon written application to the board, setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the filing thereof, he desires to be retired; provided that retirement shall be compulsory at age sixty (60).

History: En. Sec. 11, Ch. 130, L. 1963.

68-1412. Voluntary retirement. If a contributor has served twenty (20) years of creditable service as a state game warden, and has reached the age of fifty-five (55) years, he is hereby granted the option and privilege of retiring and, in such case, his retirement allowance shall be proportionately reduced.

History: En. Sec. 12, Ch. 130, L. 1963.

68-1413. Retirement allowance. Upon retirement from service a service retirement allowance shall consist of the state annuity plus the member's annuity. The member's annuity shall be the actuarial equivalent of his aggregate contributions at the time of his retirement and the state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of one-half (½) of his average final salary with twenty-five (25) years' service.

History: En. Sec. 13, Ch. 130, L. 1963; amd. Sec. 1, Ch. 111, L. 1967.

Amendments

The 1967 amendment deleted "which" before "shall consist" in the first sentence, and added "with twenty-five (25) years' service" at the end of this section.

68-1414. Disability retirement allowance. In case of the total disability of a contributor, permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement; provided that if such total disability is a direct result of any service to the Montana fish and game department in line of duty, and the contributor has had over ten (10) years of service, then such state game warden who is totally and permanently disabled shall be retired on total retirement allowance of one-half (½) of his average final salary.

History: En. Sec. 14, Ch. 130, L. 1963.

68-1415. Involuntary retirement allowance. Should a contributor be discontinued from service, not voluntarily, after having completed ten (10) years of total service, but before reaching retirement age, he shall, upon filing of an application in the manner herein provided for retirement, be paid as he may elect as follows: (a) the full amount of accumulated deductions standing to his credit; or (b) a member's annuity of equivalent

actuarial value to his accumulated deductions standing to his credit, plus the actuarial equivalent of a state annuity having a value equal to the present value of a state annuity then standing to his credit.

History: En. Sec. 15, Ch. 130, L. 1963.

68-1416. Refunds in case of resignation or discharge. When a contributor resigns of his own volition or is discharged for cause before becoming entitled to a retirement allowance, then the deductions standing to his credit shall be paid to him.

History: En. Sec. 16, Ch. 130, L. 1963.

68-1417. Payments upon death attributable to employment. If the board shall find that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary. Such retirement allowance shall consist of: (a) a member's annuity which shall be the actuarial equivalent of the contributor's accumulated deductions standing to his credit; and (b) the actuarial equivalent of a state annuity which when added to the member's annuity will provide a total annuity equal to fifty per cent (50%) of the final salary of the contributor, less the amount which is paid to any such beneficiary under the Workmen's Compensation Act of the state of Montana, during the period such compensation is paid or payable; provided that in no event shall a beneficiary be paid for more than fifteen (15) years or past the age of sixty-five (65) years, whichever is the greater.

History: En. Sec. 17, Ch. 130, L. 1963.

68-1418. Payments in case of death from natural causes. (a) If a retired state game warden dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary.

(b) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in section 15 [68-1415] above.

History: En. Sec. 18, Ch. 130, L. 1963.

68-1419. Monthly payments of retirement allowances. The retirement allowances granted under the provisions of this act shall be paid in equal monthly installments and shall not be increased, decreased, revoked or repealed unless by act of the legislative assembly of the state of Montana.

History: En. Sec. 19, Ch. 130, L. 1963.

68-1420. Exemption from taxes and execution. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these, shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment or any other process whatsoever and shall be unassignable.

History: En. Sec. 20, Ch. 130, L. 1963.

68-1421. Nomination of beneficiary. Every contributor shall have the authority to name his beneficiary by written designation duly acknowledged and filed with the board, and to change the beneficiary in like

manner. Such designation and all changes must be filed with the board up until, but not after, the time of retirement.

History: En. Sec. 21, Ch. 130, L. 1963.

68-1422. Service in the armed forces of the United States. Any state game warden now in or hereafter inducted into the armed forces of the United States, shall have the option: (a) to continue his payments into the account; or (b) allow the board to make his payments for him during such military service, in which event he shall repay the account the full amount of such payments upon his return to state game warden status, and such repayments must be made within two (2) years after his return to active state game warden status; provided that a member's service in the armed forces of the United States shall be credited to and made a part of the member's service allowance.

History: En. Sec. 22, Ch. 130, L. 1963.

68-1423. Fraud—correction of errors. (a) No person shall knowingly make any false statement or falsify or permit to be falsified any record or records of the retirement system herein established in any attempt to defraud such system; (b) should any such change in records fraudulently made or any mistake in records inadvertently made result in any contributor or beneficiary receiving more or less than he would have been entitled to had the records been correct, then, on the discovery of such error, the board shall correct such error and shall adjust the payments which shall be made to the contributor or annuitant in such manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

Any person violating any of the provisions of subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars ($1,000) or suffer imprisonment not exceeding one year, or both, in the discretion of the court.

History: En. Sec. 23, Ch. 130, L. 1963.

68-1424. Restrictions on payments. If any beneficiary is convicted of a felony, the board shall have the authority to revoke or suspend, for as long a time as it sees fit, disbursement of the state annuity. Where the illness or injuries causing a contributor to be retired, or where the death of the contributor is directly and proximately caused by such contributor's immoral or intemperate conduct or gross negligence, the board shall have the authority to refuse, revoke or suspend for as long a time as it sees fit, disbursement of the state annuity.

History: En. Sec. 24, Ch. 130, L. 1963.

68-1425. Subrogation. Where a third person is liable to the member or [any] of his dependents for injury or death, the state shall be subrogated to the right of the dependents against such third person; but only to the extent of the state annuity payable under this act by the state. Any recovery against such third person, in excess of the state annuity there-

tofore paid or thereafter to be paid by the state shall be paid forthwith to the contributor or the person designated by such contributor.

History: En. Sec. 25, Ch. 130, L. 1963.

Compiler's Note

The compiler inserted the bracketed word "any" in the first sentence.

68-1426. Payments under other laws. All payments provided for in this act are in addition to any other benefits now or hereafter provided for under the Workmen's Compensation Act of the state of Montana.

History: En. Sec. 26, Ch. 130, L. 1963.

68-1427. Optional retirement allowance. Until the first payment on account of any retirement allowance is made and subject to the conditions that, if he die after retirement and within thirty (30) days from the date upon which his election or changed election is received at the office of the retirement board, then said election is void and of no effect, and the death shall be considered as that of a member before retirement. A member or beneficiary may elect, or revoke or change a previous election prior to the approval of the previous election to receive the actuarial equivalent of his retirement allowance as of the date of retirement, in a lesser retirement allowance, payable throughout life with one of the following options:

Option No. 1. Upon his death, his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option No. 2. Upon his death, one-half (½) of his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option No. 3. Such other benefit or benefits shall be paid either to the beneficiary or to such other person or persons as he nominates, as, together with such lesser retirement allowance, are the actuarial equivalent of his retirement allowance, and shall be approved by the board.

History: En. Sec. 27, Ch. 130, L. 1963.

68-1428. Transfer of dormant accounts. The board may in its discretion transfer the accumulated deductions of a member to the employer's account in the Montana state game wardens' retirement account in the agency fund if the member's account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the accumulated deductions shall be transferred to the member's name upon subsequent re-entry to membership.

History: En. Sec. 28, Ch. 130, L. 1963.

68-1429. State public employees' retirement system, ineligibility of member. Each state game warden shall, after July 1, 1963, become a member of this retirement system and thereafter no state game warden shall be eligible to membership to the state public employees' retirement system and the provisions of said law shall not apply to Montana state game wardens.

History: En. Sec. 29, Ch. 130, L. 1963.

Separability Clause

Section 30 of Ch. 130, Laws 1963 read "The provisions of this act are severable, and, if any section, subdivision, sentence, or word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, it shall not affect the remaining portions of this act."

Repealing Clause

Section 31 of Ch. 130, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 32 of Ch. 130, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 2, 1963.

TITLE 69—PUBLIC HEALTH AND SAFETY

Chapter 1. State board of health—creation—powers and duties, Repealed—Section 223, Chapter 197, Laws of 1967.
2. Industrial hygiene, Repealed—Section 223, Chapter 197, Laws of 1967.
3. Tuberculosis control, Repealed—Section 223, Chapter 197, Laws of 1967.
4. Dental health, Repealed—Section 223, Chapter 197, Laws of 1967.
5. Vital statistics, Repealed—Section 223, Chapter 197, Laws of 1967.
6. Local boards of health in cities and towns—creation—powers and duties, Repealed—Section 223, Chapter 197, Laws of 1967.
7. County boards of health and county health officers—duties, Repealed—Section 223, Chapter 197, Laws of 1967.
8. Establishment of full-time county and district health departments and boards of health authorized, Repealed—Section 223, Chapter 197, Laws of 1967.
9. State epidemiologist—employment and powers, Repealed—Section 223, Chapter 197, Laws of 1967.
10. State board of entomology—duties—infantile paralysis—Rocky Mountain spotted fever control, Repealed—Section 223, Chapter 197, Laws of 1967.
11. Venereal disease control, Repealed—Section 223, Chapter 197, Laws of 1967.
12. Shoddy—control, manufacture and sale, Repealed—Section 223, Chapter 197, Laws of 1967.
13. Public and other water supplies—control by state board of health, Repealed—Section 223, Chapter 197, Laws of 1967.
15. Boiler inspection—engineers license, 69-1501, 69-1503, 69-1512, 69-1515, 69-1516.
18. Public safety in case of fire—fire escapes and apparatus—inspections, 69-1801, 69-1802, 69-1808.
19. Explosives—regulation of manufacture, storage and sale, 69-1910.
20. Maternity hospitals—license by state board of health, Repealed—Section 223, Chapter 197, Laws of 1967.
21. Doors on public buildings—regulation of, 69-2101, 69-2103.
22. Blood plasma—procuring and processing, Repealed—Section 223, Chapter 197, Laws of 1967.
23. Cadavers—procurement for teaching anatomical science—autopsies and dissections, 69-2311 to 69-2314.
24. Long-term care facilities, Repealed—Section 223, Chapter 197, Laws of 1967.
25. Retiring room for employees serving food to the public required, Repealed—Section 223, Chapter 197, Laws of 1967.
26. Mats or other floor coverings required in certain establishments where food is served, Repealed—Section 223, Chapter 197, Laws of 1967.
29. Licensing and supervision of hospitals and related facilities, Repealed—Section 223, Chapter 197, Laws of 1967.
30. Montana Hospital, Medical and Related Facility Survey and Construction Act, Repealed—Section 223, Chapter 197, Laws of 1967.
31. Cesspools, septic tanks, privies and sewage lagoons, Repealed—Section 223, Chapter 197, Laws of 1967.
32. State board of health—maternal and child health services—educative program—school nurses—supervision by board—authority of counties and school boards—services for crippled children—education for children and adults in use and abuse of narcotics, Repealed—Section 223, Chapter 197, Laws of 1967.
34. Sanitarians, 69-3404.
35. Motorboat and vessel regulation, 69-3502, 69-3505, 69-3508.1, 69-3508.2.
36. County and municipal ambulance service, 69-3601.
37. Accommodation of handicapped persons in public buildings, 69-3701 to 69-3719.
38. Public swimming pools and bathing places, Repealed—Section 223, Chapter 197, Laws of 1967.
39. Air pollution, 69-3904 to 69-3923.
40. Refuse disposal areas, 69-4001 to 69-4010.

41. State board of health, 69-4101 to 69-4118.
42. Industrial hygiene, 69-4201 to 69-4205.
43. Tuberculosis control, 69-4301 to 69-4317.
44. Vital statistics, 69-4401 to 69-4437.
45. Local boards of health, 69-4501 to 69-4519.
46. Venereal disease, 69-4601 to 69-4617.
47. Shoddy control, 69-4701 to 69-4707.
48. Water pollution, 69-4801 to 69-4819.
49. Public water supply, 69-4901 to 69-4908.
50. Subdivisions, 69-5001 to 69-5005.
51. Cadavers, 69-5101 to 69-5106.
52. Hospitals, hospital related facilities, and long-term care facilities, 69-5201 to 69-5221.
53. Hospitals, medical and related facility survey and construction, 69-5301 to 69-5313.
54. Cesspools, septic tanks, and privies, 69-5401 to 69-5408.
55. Public swimming pools and bathing places, 69-5501 to 69-5511.
56. Tourist campgrounds, 69-5601 to 69-5607.
57. General penalty, 69-5701.
58. Control of ionizing radiation, 69-5801 to 69-5816.
59. Water treatment plants and distribution systems, 69-5901 to 69-5912.

CHAPTER 1—STATE BOARD OF HEALTH—CREATION—POWERS AND DUTIES

(Repealed—Section 7, Chapter 57, Laws of 1949; Section 28, Chapter 264, Laws of 1955; Section 223, Chapter 197, Laws of 1967)

69-101 to 69-103. (2444 to 2446) Repealed.

Repeal

These sections (Sec. 1, Ch. 110, L. 1907; Secs. 1 to 3, Ch. 225, L. 1919; Secs. 1, 2, Ch. 225, L. 1943; Secs. 1 to 3, Ch. 57, L. 1949; Sec. 1, Ch. 181, L. 1953; Sec. 1, Ch. 212, L. 1961), relating to the creation and composition of the state board of health, were repealed by Sec. 223, Ch. 197, Laws 1967.

69-105. (2448) Repealed.

Repeal

This section (Sec. 2, p. 81, L. 1901; Sec. 2, Ch. 110, L. 1907; Sec. 1, Ch. 264, L. 1955), relating to the functions, powers and duties of the state board of health, was repealed by Sec. 223, Ch. 197, Laws 1967.

69-105.1 to 69-105.4. Repealed.

Repeal

These sections (Secs. 4 to 6, Ch. 57, L. 1949; Sec. 2, Ch. 264, L. 1955), relating to additional powers, legal advisor and laboratory services of the state board of health, were repealed by Sec. 223, Ch. 197, Laws 1967.

69-107. (2450) Repealed.

Repeal

This section (Sec. 4, Ch. 110, L. 1907), relating to the rule-making power of the state board of health, was repealed by Sec. 223, Ch. 197, Laws 1967.

69-109 to 69-127. (2452 to 2463) Repealed.

Repeal

These sections (Secs. 8 to 10, 25 to 27, 32, 36 to 38, Ch. 110, L. 1907; Sec. 1, Ch. 66, L. 1911; Sec. 1, Ch. 15, L. 1913; Sec. 1, Ch. 103, L. 1917; Sec. 1, Ch. 124, L. 1921; Secs. 1 to 6, Ch. 80, L. 1929; Sec. 1, Ch. 191, L. 1947; Sec. 1, Ch. 59, L. 1955; Sec. 18, Ch. 41, L. 1963), relating to tourist camp grounds and communicable diseases, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 2—INDUSTRIAL HYGIENE

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-201 to 69-208. Repealed.

Repeal

These sections (Secs. 1 to 8, Ch. 127, L. 1939; Sec. 3, Ch. 264, L. 1955), relating to industrial hygiene, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 3—TUBERCULOSIS CONTROL

(Repealed—Section 28, Chapter 264, Laws of 1955; Section 223, Chapter 197, Laws of 1967)

69-301. Repealed.

Repeal

This section (Sec. 1, Ch. 170, L. 1945; Sec. 4, Ch. 264, L. 1955), relating to tuberculosis control, was repealed by Sec. 223, Ch. 197, Laws 1967.

69-303 to 69-319. Repealed.

Repeal

These sections (Sec. 3, Ch. 170, L. 1945; Secs. 1 to 16, Ch. 259, L. 1959; Secs. 75, 76, Ch. 199, L. 1965), relating to tuberculosis control, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 4—DENTAL HEALTH

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-401 to 69-404. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 125, L. 1943; Sec. 1, Ch. 189, L. 1947; Secs. 5 to 7, Ch. 264, L. 1955), relating to dental health, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 5—VITAL STATISTICS

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-501 to 69-536. Repealed.

Repeal

These sections (Secs. 1 to 35, Ch. 44, L. 1943; Sec. 1, Ch. 21, L. 1947; Secs. 8 to 10, Ch. 264, L. 1955; Sec. 14, Ch. 121, L. 1965; Sec. 1, Ch. 207, L. 1965), relating to vital statistics, were repealed by Sec. 223, Ch. 197, Laws 1967.

69-536.1, 69-536.2. Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 137, L. 1963), relating to vital statistics on divorces and annulments, were repealed by Sec. 223, Ch. 197, Laws 1967.

69-537 to 69-539. Repealed.

Repeal

These sections (Secs. 36 to 39, Ch. 44, L. 1943), relating to vital statistics, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 6—LOCAL BOARDS OF HEALTH IN CITIES AND TOWNS—CREATION—POWERS AND DUTIES

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-601 to 69-609. (2464 to 2472) Repealed.

Repeal

These sections (Secs. 11 to 18, 24, Ch. 110, L. 1907; Sec. 1, Ch. 117, L. 1909), relating to boards of health in cities and towns, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 7—COUNTY BOARDS OF HEALTH AND COUNTY HEALTH OFFICERS—DUTIES

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-701 to 69-712. (2473 to 2484) Repealed.

Repeal

These sections (Secs. 19 to 23, 28 to 31, 33 to 35, Ch. 110, L. 1907; Sec. 1, Ch. 93, L. 1931; Sec. 1, Ch. 26, L. 1933; Sec. 1, Ch. 111, L. 1957), relating to county boards of health and health officers, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 8—ESTABLISHMENT OF FULL-TIME COUNTY AND DISTRICT HEALTH DEPARTMENTS AND BOARDS OF HEALTH AUTHORIZED

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-801 to 69-817. Repealed.

Repeal

These sections (Secs. 1 to 14, Ch. 171, L. 1945; Secs. 1 to 3, Ch. 174, L. 1965), relating to health units and boards of health, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 9—STATE EPIDEMIOLOGIST—EMPLOYMENT AND POWERS

(Repealed—Section 28, Chapter 264, Laws of 1955; Section 223, Chapter 197, Laws of 1967)

69-901, 69-902. (2540, 2541) Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 76, L. 1919; Sec. 11, Ch. 264, L. 1955), relating to the state epidemiologist, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 10—STATE BOARD OF ENTOMOLOGY—DUTIES—INFANTILE PARALYSIS—ROCKY MOUNTAIN SPOTTED FEVER CONTROL

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-1001 to 69-1025. (2543 to 2561.6) Repealed.

Repeal

These sections (Secs. 1 to 9, Ch. 120, L. 1913; Secs. 1 to 10, Ch. 27, L. 1919; Secs. 1 to 6, Ch. 24, L. 1923), relating to the state board of entomology, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 11—VENEREAL DISEASE CONTROL

(Repealed—Section 18, Chapter 107, Laws of 1965; Section 223, Chapter 197, Laws of 1967)

69-1101 to 69-1121. (2562 to 2577) Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 86, L. 1919; Secs. 1 to 14, Ch. 106, L. 1919; Sec. 1, Ch. 126, L. 1943; Secs. 1 to 5, Ch. 119, L. 1945; Secs. 12, 13, Ch. 264, L. 1955), relating to venereal disease control, were repealed by Sec. 18, Ch. 107, Laws 1965.

69-1122 to 69-1138. Repealed.

Repeal

These sections (Secs. 1 to 17, Ch. 107, L. 1965), relating to venereal disease control, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 12—SHODDY—CONTROL, MANUFACTURE AND SALE

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-1201 to 69-1220. (2615 to 2619) Repealed.

Repeal

These sections (Secs. 1 to 5, Ch. 146, L. 1915; Secs. 1 to 15, Ch. 70, L. 1941), relating to shoddy control, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 13—PUBLIC AND OTHER WATER SUPPLIES—CONTROL BY STATE BOARD OF HEALTH

(Repealed—Section 15, Chapter 142, Laws of 1955; Section 223, Chapter 197, Laws of 1967)

69-1301 to 69-1320. (2641 to 2657) Repealed.

Repeal

These sections (Secs. 1 to 14, Ch. 177, L. 1907; Sec. 2, Ch. 66, L. 1911; Sec. 1, Ch. 26, L. 1917; Secs. 1 to 3, Ch. 126, L. 1917; Sec. 1, Ch. 34, L. 1925; Secs. 1 to 3, Ch. 118, L. 1931; Secs. 1, 2, Ch. 127, L. 1945; Secs. 1 to 3, Ch. 157, L. 1965), relating to water supplies control, were repealed by Sec. 223, Ch. 197, Laws 1967.

69-1326 to 69-1346. Repealed.

Repeal

These sections (Secs. 1 to 16, Ch. 142, L. 1955; Sec. 1, Ch. 151, L. 1959; Secs. 1 to 5, Ch. 95, L. 1961; Secs. 1 to 3, Ch. 164, L. 1963), the Water Pollution Act, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 14—CONSTRUCTION OF TEMPORARY FLOORS AND SCAFFOLDS

69-1401. (2672) Construction of scaffolds.

Common-law Defenses Foreclosed

In action against employers for personal injuries alleged to have resulted from a fall from a scaffold trial court was not in error in refusing defendants' instruction on assumption of the risk where the court gave defendants more than they were entitled to by granting them an instruction on contributory negligence over plaintiff's objection that this section had removed that defense. Pollard v. Todd, — M —, 418 P 2d 869, 873.

The mandatory nature of the Scaffold Act (69-1401 to 69-1405) forecloses the common-law defenses of assumption of the risk, contributory negligence, and negligence of a fellow servant; but a defendant may escape liability upon proof that there was no violation of the statute or that the violation was not the proximate cause of the injury. Pollard v. Todd, — M —, 418 P 2d 869, 873.

Negligence

In action against employers for personal injuries alleged to have resulted from a fall from a scaffold although plaintiff was entitled to an instruction that this section imposed an absolute duty upon the defendants and that a breach of that statutory duty was negligence per se, whether this negligence was the proximate cause of the injury was a question for the jury. Pollard v. Todd, — M —, 418 P 2d 869, 873.

Purpose

The purpose of this section is to supplement the protection of the common law by providing criminal sanctions and imposing an absolute statutory duty upon the owners of real estate to protect workmen and others from the extraordinary hazards associated with scaffolds. Pollard v. Todd, — M —, 418 P 2d 869, 873.

CHAPTER 15—BOILER INSPECTION—ENGINEERS LICENSE

Section 69-1501. Advisory committee on boiler rules—functions—appointment and terms of members—traveling expenses—rules and regulations—state inspectors of boilers, appointment, term and compensation—special boiler inspectors.
69-1503. Inspection of boilers—new boiler installations.
69-1512. Fees for inspection or examination.
69-1515. Boilers exempted from provisions—duty of owner of traction engine—notice of purchase of boiler.
69-1516. Certificates must be renewed yearly—disposition of moneys.

69-1501. (2712) Advisory committee on boiler rules—functions—appointment and terms of members—traveling expenses—rules and regulations—state inspectors of boilers, appointment, term and compensation—special boiler inspectors. (1) There is hereby created to advise the industrial accident board an advisory committee on boiler rules which shall hereafter be referred to as the committee, consisting of three (3) members who shall be appointed by the governor, one for two (2) years, one for three (3) years and one for four (4) years. At the expiration of their respective terms or when vacancies occur they or their successors indentified [identified] with the same interest respectively shall be appointed by the governor for terms of four (4) years each. Of these appointed members one (1) shall be a practical steam operating engineer of boilers, one (1) shall represent the boiler insurance companies licensed to do business in the state, and one (1) shall be a graduate mechanical engineer. The committee shall elect one (1) of its members as chairman and shall meet twice each year.

The members of the committee shall serve without salary but shall receive actual travel expenses in the same manner as other state officers.

The committee shall act in a technical advisory capacity to the industrial accident board and shall formulate definitions, rules and regulations for the safe construction, installation, inspection and repair of equipment covered by this act. The definitions, rules and regulations so formulated shall follow generally accepted nation-wide engineering standards as published by the American society of mechanical engineers.

(2) Appointment, term and compensation of boiler inspectors. The industrial accident board shall appoint not to exceed four (4) state in-

spectors of boilers and shall prescribe their term of office and fix their compensation.

In addition to the state boiler inspectors the industrial accident board shall issue to the inspectors of boiler insurance companies authorized to do business in the state, commissions, certificates or other recognition as special boiler inspectors and shall accept the inspection reports of such special inspectors as equivalent to those of the state inspectors, provided that each such special inspector shall hold a certificate as boiler inspector issued by the national board of boiler and pressure vessel inspectors. Such special inspectors shall receive no salary or expenses from the state nor shall the state collect inspection fees for inspections made by such special inspectors.

History: En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R. C. M. 1921; amd. Sec. 1, Ch. 77, L. 1967.

Compiler's Notes

The compiler inserted the bracketed word "identified" in the first paragraph of subsection (1) of this section.

Amendments

The 1967 amendment rewrote this section. Prior to amendment it read, "The industrial accident board shall appoint not to exceed four inspectors of boilers and shall prescribe their term of office and fix their compensation."

69-1503. (2714) **Inspection of boilers—new boiler installations.** (1) The inspector of boilers must inspect all steam boilers and steam generators before the same are used, and all persons who bring into this state any boiler or boilers must notify the boiler inspector stating the number and kind of boilers, where they had heretofore been located, and where they are to be located and operated in this state, and must secure from the boiler inspector a certificate of inspection before said boilers are placed in operation, except in the case of new boilers, which must be inspected within ninety (90) days after they are put in use, and all boilers must be inspected at least once in every year, except boilers exempt under provisions of section 69-1515. Any person failing to give notice to the boiler inspector as herein provided, or who operates such boilers without a certificate from the boiler inspector, shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense, or by imprisonment in the county jail for not less than thirty (30) nor more than ninety (90) days, or by both such fine and imprisonment.

(2) The inspector of boilers must subject all boilers, except those exempted by 69-1515, to hydrostatic pressure, which hydrostatic pressure must be thirty-three and one-third per cent (33⅓%) greater than the steam pressure allowed on the boilers, providing there are no such leaks on such boilers which prevent the inspector from applying such hydrostatic pressure. And the inspector must satisfy himself by a thorough interior and exterior examination that the boilers are well made and of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat, are of the proper dimensions and free from obstructions; that the flues are circular in shape; that the fire line of the furnace is at least two (2) inches below prescribed minimum water line of the boilers; that the

arrangements for delivering the feed water are such that the boilers cannot be injured thereby, and that such boilers and the steam connections may be safely employed without danger to life.

(3) New boiler installations. No boiler which does not conform to the rules and regulations formulated by the committee governing new construction and installation shall be installed and operated in this state after twelve (12) months from the date upon which the first rules and regulations under this act pertaining to new construction and installation shall have become effective, unless the boiler is of special design or construction, and is not covered by the rules and regulations, nor is in any way inconsistent with such rules and regulations, in which case a special installation and operating permit may at its discretion be granted by the committee.

History: Ap. p. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R. C. M. 1921; amd. Sec. 2, Ch. 77, L. 1967.

Amendments

The 1967 amendment added "except boilers exempt under provisions of section 69-1515" after "in every year" at the end of the first sentence in subsection (1); inserted "except those exempted by 69-1515" after "all boilers" in subsection (2); added subsection (3); and made minor changes in style by the addition of arabic numerals after the written numbers.

69-1512. (2723) Fees for inspection or examination. (1) At the time of inspection, the state inspector of boilers shall collect fees for the inspection in accordance with the following schedule:

(a) to (e). * * * [Same as parent volume.]

In case of the failure of the owner, manager or person in charge of any boiler to pay such fee upon the demand of the inspector, said inspector is authorized to seal the firebox of said boiler, and said seal shall not be removed until said fee is paid and the written order of the inspector authorizing its removal is received by said owner or manager. Any person who tampers with or removes such seal without such written order shall be deemed guilty of a misdemeanor and punished as provided by section 69-1507.

(2). * * * [Same as parent volume.]

(3) Applicants for engineer's license shall pay fees according to the class of license for which application is made, as specified in the following schedule.

(a) to (g). * * * [Same as parent volume.]

In case of the failure of any applicant to pass a successful examination, ninety (90) days must elapse before he can again be examined for license. But the inspector may grant to the applicant a lower grade of license than that applied for upon such examination. All certificates of inspection and engineers' licenses must be displayed in a conspicuous place in the engine room.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R. C. M. 1921; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967.

Amendments

The 1967 amendment inserted "state" before "inspector" in the first sentence of subsection (1); and inserted "(90)" before "days must elapse" in the last paragraph of subsection (3) of this section.

69-1515. (*2726*) **Boilers exempted from provisions—duty of owner of traction engine—notice of purchase of boiler.** (1) This act shall not apply to boilers under federal control. The provisions of this act requiring inspections, inspection fees and certificates shall not apply to steam heating boilers carrying a pressure of not over fifteen (15) psi in private residences or apartments of six (6) or less families or to hot water heating or supply boilers operated at pressure not over one hundred and sixty (160) psi and temperatures not over two hundred fifty degrees fahrenheit (250°F) when in private residences or apartments of six (6) or less families. Locomotives used on railroads conducting a general business in hauling passengers and freight do not come under the provisions of this article. But locomotives, commonly known as dinkey engines, used in operating logging or mining railroads, or any similar work where such locomotives are owned, leased or operated by any individual, company, or corporation and are used in the business of such individual, company, or corporation, and not for general commercial purposes, shall be classed as traction engines and be subject to inspection as are other traction engines, and the persons operating or firing such dinkey locomotives shall be required to hold traction licenses. Nor are locomotive engineers, save as herein provided, or persons operating any of the engines or boilers herein, exempted from the operation of this article, required to procure license from the inspectors.

(2) It shall be the duty of the owner and user of any traction engine or boiler on wheels to notify the inspector of the location of such boiler on or before the first day of June of each year. Any owner or user of such traction engine or boiler on wheels who shall fail to notify the inspector as herein provided shall be deemed guilty of a misdemeanor. Any person purchasing any steam boiler whether traction or stationary boiler, shall be entitled to receive from the seller the certificates of inspection issued on such boiler and any person purchasing any steam boiler, whether traction or stationary, not exempted by the provisions of this section, shall, within ten (10) days after such purchase, report the fact of such purchase to the boiler inspector and notify such inspector where he intends to locate or operate said boiler. Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor. All other steam boilers and steam engines, save as herein exempted, come under the provisions of this article and persons operating same are required to hold the proper grade of license.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R. C. M. 1921; amd. Sec. 1, Ch. 140, L. 1923; amd. Sec. 4, Ch. 77, L. 1967.

Amendments

The 1967 amendment substituted the first two sentences for "Boilers used for heating purposes in private residences, low pressure cast iron sectional boilers carrying not to exceed fifteen pounds steam pressure, and" before "Locomotives" in subsection (1); and inserted "(10)" before "days after such purchase" in the third sentence of subsection (2).

69-1516. (*2727*) **Certificates must be renewed yearly—disposition of moneys.** All certificates of license to engineers of all classes shall be renewed yearly, except as herein provided. The fee for renewal is two dollars

($2.00) in all cases. Any engineer failing to renew his license as herein provided, or within at least thirty days thereafter, must forward the fee for the original license of the same grade, before license can be reissued; provided, however, that any engineer whose license expired while such engineer was in the military or naval service of the United States shall have sixty days (60) from the time such engineer is discharged from such military or naval service within which to renew his license at the renewal fee of one dollar.

All moneys collected by virtue of the provisions of this act must be paid into the state treasury once in each month and credited to the earmarked revenue fund.

History: En. Sec. 6, Ch. 32, L. 1905; re-en. Sec. 1656, Rev. C. 1907; amd. Sec. 14, Ch. 30, L. 1913; amd. Sec. 1, Ch. 54, L. 1919; re-en. Sec. 2727, R. C. M. 1921; amd. Sec. 2, Ch. 54, L. 1959; amd. Sec. 167, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund" for "the industrial administration fund" at the end of the section.

CHAPTER 18—PUBLIC SAFETY IN CASE OF FIRE—FIRE ESCAPES AND APPARATUS—INSPECTIONS

Section 69-1801. Purpose of act.
69-1802. Application of act.
69-1808. Inspection by fire chiefs, county sheriff, deputy fire marshals—review of plans by fire marshal—permits—notice of inadequate equipment—compliance—enforcement.

69-1801. Purpose of act. The purpose and intent of this act is to provide for the public safety in case of fire in those occupancies specified in section 69-1802; to provide for fire escapes, fire-fighting apparatus, fire alarms; and to provide for inspection of such buildings and premises by specified officers.

History: En. Sec. 1, Ch. 279, L. 1947; amd. Sec. 9, Ch. 229, L. 1967.

Amendments

The 1967 amendment substituted "occupancies" for "buildings" before "specified"; and deleted "open to or used by the public" after "section 69-1802."

69-1802. Application of act. Sections 69-1801 through 69-1810, R.C.M. 1947, apply to the following occupancies:

(1) Assembly occupancy means the occupancy or use of a building or structure or any portion thereof by a gathering of persons for civic, political, travel, religious, social or recreational purposes; including among others,

armories
assembly halls
auditoriums
bowling alleys
broadcasting studios
chapels
churches
club rooms
dance halls
exhibition rooms
gymnasiums
lecture halls
lodge rooms
motion picture theaters
museums
night clubs
opera houses
passenger stations
pool rooms
recreation areas
restaurants
skating rinks
television studios
theaters
taverns

(2) Business occupancy means the occupancy or use of a building or structure or any portion thereof for the transaction of business, or the rendering or receiving of professional services; including among others,

banks	office buildings	telephone exchanges
barber shops	radio stations	television stations
beauty parlors		

(3) Educational occupancy means the occupany or use of a building or structure or any portion thereof by persons assembled for the purpose of learning or of receiving educational instruction; including among others,

academies	libraries	schools
colleges		universities

(4) Industrial occupancy means the occupancy or use of a building or structure or any portion thereof for assembling, fabricating, finishing, manufacturing, packaging or processing operations; including among others,

assembly plants	laboratories	processing plants
creameries	laundries	pumping stations
electric substations	manufacturing plants	repair garages
factories	mills	smoke houses
ice plants	power plants	work shops

(5) Institutional occupancy means the occupancy or use of a building or structure or any portion thereof by persons harbored or detained to receive medical, charitable or other care or treatment, or by persons involuntarily detained; including among others,

asylums	infirmaries	penal institutions
homes for the aged	jails	reformatories
hospitals	nurseries	sanitariums
houses of correction	orphanages	long-term care facilities
day care facilities	nursing homes	boarding homes

(6) Residential occupancy means the occupancy or use of a building or structure or any portion thereof by persons for whom sleeping accommodations are provided but who are not harbored or detained to receive medical, charitable or other care or treatment, or are not involuntarily detained, including among others,

apartments	dormitories	motels
club houses	dwellings	multifamily houses
convents	hotels	lodging houses

but not including single-family private houses.

History: En. Sec. 2, Ch. 279, L. 1947; amd. Sec. 10, Ch. 229, L. 1967.

Amendments

The 1965 amendment inserted "boarding and nursing homes for aged persons."

The 1967 amendment completely rewrote this section. Prior to amendment, it read, "This act shall apply to hotels, night clubs, boarding or rooming houses, apartments, dormitories, office buildings, theaters, gymnasiums, any place of public amusement or used for public gatherings, colleges, schools, stadiums, amphitheaters, factories, hospitals, boarding and nursing homes for aged persons, motor courts, tourist inns, cabins, asylums, sanitariums, and all other places where large numbers of persons work, sleep, live, or congregate from time to time for any purpose but not to private residences."

Effective Date

Section 2 of Ch. 22, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 18, 1965.

69-1808. Inspection by fire chiefs, county sheriff, deputy fire marshals—review of plans by fire marshal—permits—notice of inadequate equipment—compliance—enforcement. (1) Within incorporated municipalities an educational or institutional occupancy, whether public or private may not be constructed or alterations made costing fifteen hundred dollars ($1,500) or more unless sketches or architectural plans, whichever are available, are submitted for the construction or alteration to the state fire marshal and approved by him.

(2) Outside incorporated municipalities an assembly, educational or institutional occupancy may not be constructed or alterations made costing fifteen hundred dollars ($1,500) or more unless a permit has been issued for the construction or alteration by the county commissioners. A fee of ten dollars ($10) shall be paid to the county treasurer for each permit. A copy of said permit shall be furnished to the county assessor. No permit shall be issued until sketches or architectural plans, whichever are available, are submitted for the alteration or construction of the above occupancies to the state fire marshal and approved by him. The fire marshal and county sheriffs are responsible for enforcing the provisions of this subsection.

(3) A building designed for human occupancy owned or controlled by the state may not be constructed unless plans for the construction have been submitted to the state fire marshal and approved by him.

(4) It shall be the duty of the chief of the fire department of each municipality or district where a fire department is established and the county sheriff or deputy fire marshals where no fire department exists at least once each six (6) months to enter into all buildings and upon all premises within his jurisdiction for the purpose of the examination of such premises for violations of this act. Such inspection shall include but shall not be limited to testing fire alarms, fire extinguishers, examining fire hose and attachments, and other fire apparatus, and examining fire escapes provided for herein. Copies of such inspection shall be filed in the office of the state fire marshal on forms to be provided by him.

(5) When any building shall be found which required the erection of fire escapes, and upon which fire escapes have not been erected according to the provisions of this act, or if fire hoses, fire extinguishers, fire alarms, or other fire apparatus is found to be lacking or defective or not in good working condition, the person making such inspection or the state fire marshal shall serve a written notice upon the party or parties whose duty it is to erect such fire escapes, or maintain such fire apparatus. Said notice shall specify the time within which said fire escapes shall be erected, or such defective conditions be remedied, and in no case shall be more than ninety (90) days; and said notice shall be deemed to have been served if delivered to the person to be notified, or if left with any adult person at the usual residence or place of business of the person to be notified, or if deposited in the post office, directed to the last known address of the person to be notified. In case of buildings within the term of this act, that are managed and controlled by a board of trustees, board of commissioners, or other governing body, to cause the erection of fire escapes on said buildings, as may be required; provided, that the occu-

pant or lessee of any building who is required to erect fire escapes under the provisions of this act, shall be entitled to reimburse himself for the cost and expense of erecting said fire escapes out of the rent or lease money of said premises, and such reimbursement shall not be construed to be a breach of any existing lease, contract, or any covenant thereof nor grounds for any action or damage ouster.

(6) The state fire marshal shall have general charge and supervision of the enforcement of the provisions of this act and such officers as above enumerated shall act under the general charge and supervision of the state fire marshal. Said officer shall assist the state fire marshal in giving effect to the terms and provisions of this act and shall be subject to his direction and to the rules adopted for the enforcement of this act.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967.

Amendments

The 1967 amendment added subsections (1), (2) and (3), designated the first paragraph of the old section as new subsection (4); in new subsection (4), substituted "municipality or district" for "city or village" after "department of each"; substituted "county sheriff or deputy fire marshals" for "mayor of the city or village" after "is established and the"; deleted "or the justice of the peace of a township in territory without the limits of a city or village" after "exists"; and designated the second paragraph of the old section as new subsection (5), and the third paragraph of the old section as new subsection (6).

CHAPTER 19—EXPLOSIVES—REGULATION OF MANUFACTURE, STORAGE AND SALE

Section 69-1910. License.

69-1910. (2795) **License.** Every person engaging in the keeping or storing of explosives shall pay an annual license fee for each magazine maintained, to be graduated by the state fire marshal according to the quantity kept or stored therein, of not less than five dollars ($5.00) nor more than thirty dollars ($30.00). Said license fee shall be payable in advance to the state fire marshal and by him paid to the state treasurer.

History: En. Sec. 10, Ch. 129, L. 1917; re-en. Sec. 2795, R. C. M. 1921; amd. Sec. 8, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the minimum license fee specified in the first sentence from $1.00 to $5.00 and the maximum fee from $25 to $30.

CHAPTER 20—MATERNITY HOSPITALS—LICENSE BY STATE BOARD OF HEALTH

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-2001 to 69-2004. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 66, L. 1941), relating to the licensing of maternity hospitals, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 21—DOORS ON PUBLIC BUILDINGS—REGULATION OF

Section 69-2101. Doors on buildings accommodating the public to open outward.
69-2103. Duty of state fire marshal, his deputies, county sheriffs—notice of violation.

69-2101. Doors on buildings accommodating the public to open outward. Every person who constructs, owns, controls, or has the custody of any building erected, or to be erected, which is defined as an assembly, educational, or institutional occupancy in section 69-1802, R.C.M. 1947, or any building owned or controlled by the state of Montana to be used for human occupancy shall have at least two (2) separate exits or as many more as the fire marshal shall direct. These exits shall be placed as remote from each other as consistent with the construction of the building and shall be easily accessible from all parts of the building.

History: En. Sec. 1, Ch. 114, L. 1943; amd. Sec. 12, Ch. 229, L. 1967.

Amendments

The 1967 amendment substituted "which is defined as an assembly, educational, or institutional occupancy in section 69-1802, R. C. M. 1947" for "to be used to accommodate public assemblies, including churches, schools, courthouses, theaters, public halls, ballrooms, beer parlors, taverns, roadhouses, night clubs, or any other building of like character" after "to be erected"; and substituted "for human occupancy" for "as an office building, dormitory, school, or for penal or custodial purposes, or any other building of like character" after "to be used."

69-2103. Duty of state fire marshal, his deputies, county sheriffs—notice of violation. It shall be the duty of the state fire marshal, his deputies and county sheriffs to enter into all assembly, educational, or institutional occupancies as defined in section 69-1802, R.C.M. 1947, for the purpose of examination of such premises for violations of this act, and when any building shall be found which has not been constructed or maintained according to the provisions of this act, he shall serve or cause to be served a written notice upon the person or persons who own or have under control such building. This notice shall specify the violation and the time given within which such violation shall be remedied. Upon the failure of any of the parties charged with the duty of correcting such violations, in accordance with this act, the state fire marshal shall transmit this information to the attorney general of the state, who shall refer said violation to the county attorney of the county wherein the violation occurs for prosecution, and the attorney general may assist the said county attorney to a determination of the matter. The said attorney general shall instruct the said county attorney to institute an action against the owner, lessee or occupant of such building for an injunction and abatement against the property.

History: En. Sec. 3, Ch. 114, L. 1943; amd. Sec. 13, Ch. 229, L. 1967.

Amendments

The 1967 amendment substituted "county sheriffs" for "subordinates" after "deputies and"; and substituted "assembly, educational, or institutional occupancies as defined in section 69-1802, R. C. M. 1947" for "buildings and upon all premises described in this act" after "enter into all."

Repealing Clause

Section 14 of Ch. 229, Laws 1967 read "Sections 82-1203, 82-1204, 82-1210, 82-1227 and 82-1228, R. C. M. 1947, are repealed."

CHAPTER 22—BLOOD PLASMA—PROCURING AND PROCESSING

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-2201, 69-2202. Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 20, L. 1945), relating to blood plasma, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 23—CADAVERS—PROCUREMENT FOR TEACHING ANATOMICAL SCIENCE—AUTOPSIES AND DISSECTIONS

Section 69-2311. Power to provide for disposition of person's own body.
69-2312. Will or acknowledged instrument required for disposition of body.
69-2313. Testamentary disposition of body carried out before probate.
69-2314. No civil liability for reliance on instrument disposing of body.

69-2301 to 69-2310. Repealed.

Repeal

These sections (Secs. 1 to 7, Ch. 102, L. 1943; Secs. 1 to 3, Ch. 172, L. 1949; Secs. 19 to 21, Ch. 41, L. 1963; Sec. 87, Ch. 199, L. 1963), relating to the procurement of cadavers, were repealed by Sec. 223, Ch. 197, Laws 1967.

69-2311. Power to provide for disposition of person's own body. A person eighteen (18) years of age or older may provide for the disposition of all or any part of his body upon death for:

(1) purposes of education or research; or

(2) any therapeutic use.

History: En. Sec. 1, Ch. 22, L. 1967.

Title of Act

An act authorizing a person to provide for the disposition of all or any part of his body upon his death.

69-2312. Will or acknowledged instrument required for disposition of body. The authorization for the disposition of all or any part of a body shall be by will or acknowledged written instrument.

History: En. Sec. 2, Ch. 22, L. 1967.

69-2313. Testamentary disposition of body carried out before probate. If the authorization is by will, the instructions shall be carried out, even though the will cannot be admitted for probate until a later date.

History: En. Sec. 3, Ch. 22, L. 1967.

69-2314. No civil liability for reliance on instrument disposing of body. There shall be no civil liability for reliance on the terms of a written authorization given in accordance with this act.

History: En. Sec. 4, Ch. 22, L. 1967.

CHAPTER 24—LONG-TERM CARE FACILITIES

(Repealed—Section 17, Chapter 162, Laws of 1965; Section 223, Chapter 197, Laws of 1967)

69-2401 to 69-2406. Repealed.

Repeal

These sections (Secs. 1 to 6, Ch. 192, L. 1947; Sec. 1, Ch. 243, L. 1959), relating to homes for the aged, were repealed by Sec. 17, Ch. 162, Laws 1965.

69-2407 to 69-2421. Repealed.

Repeal

These sections (Secs. 1 to 15, Ch. 162, L. 1965), relating to long-term care facilities for aged persons, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 25—RETIRING ROOM FOR EMPLOYEES SERVING FOOD TO THE PUBLIC REQUIRED

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-2501 to 69-2504. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 203, L. 1945), relating to sanitation facilities for restaurant employees, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 26—MATS OR OTHER FLOOR COVERINGS REQUIRED IN CERTAIN ESTABLISHMENTS WHERE FOOD IS SERVED

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-2601 to 69-2603. Repealed.

Repeal

These sections (Secs. 1 to 3, Ch. 202, L. 1945), relating to the installation of mats on restaurant floors, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 28—REFRIGERATED LOCKERS—REGULATION OF

(Repealed—Section 4, Chapter 149, Laws of 1959; Section 16, Chapter 17, Laws of 1967, effective January 1, 1968)

69-2801 to 69-2813. Repealed.

Repeal

These sections (Secs. 1 to 13, Ch. 220, L. 1947; Secs. 14 to 21, Ch. 264, L. 1955; Secs. 1 to 3, Ch. 149, L. 1959), relating to refrigerated locker regulations, were repealed by Sec. 16, Ch. 17, Laws 1967, effective January 1, 1968.

69-2815, 69-2816. Repealed.

Repeal

These sections (Secs. 15, 16, Ch. 220, L. 1947), relating to refrigerated locker regulations, were repealed by Sec. 16, Ch. 17, Laws 1967, effective January 1, 1968.

CHAPTER 29—LICENSING AND SUPERVISION OF HOSPITALS AND RELATED FACILITIES

(Repealed—Section 9, Chapter 78, Laws of 1965; Section 223, Chapter 197, Laws of 1967)

69-2901 to 69-2910. Repealed.

Repeal

These sections (Secs. 1 to 10, Ch. 269, L. 1947; Secs. 1 to 8, Ch. 78, L. 1965; Sec. 15, Ch. 121, L. 1965), relating to hospital licensing and supervision, were repealed by Sec. 223, Ch. 197, Laws 1967.

69-2910.1. Repealed.

Repeal

This section (Sec. 1, Ch. 78, L. 1953), transferring functions to the former advisory hospital council, was repealed by Sec. 9, Ch. 78, Laws 1965.

69-2911 to 69-2918. Repealed.

Repeal

These sections (Secs. 11 to 17, 19, Ch. 269, L. 1947; Secs. 10 to 13, Ch. 78, L. 1965), relating to hospital licensing and supervision, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 30—MONTANA HOSPITAL, MEDICAL AND RELATED FACILITY SURVEY AND CONSTRUCTION ACT

(Repealed—Section 2, Chapter 78, Laws of 1953; Section 14, Chapter 77, Laws of 1965; Section 223, Chapter 197, Laws of 1967)

69-3001 to 69-3004. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 270, L. 1947; Secs. 1 to 3, Ch. 215, L. 1955; Secs. 22, 23, Ch. 264, L. 1955; Secs. 1 to 4, Ch. 77, L. 1965), relating to hospital survey and construction, were repealed by Sec. 223, Ch. 197, Laws 1967.

69-3006. Repealed.

Repeal

This section (Sec. 7, Ch. 270, L. 1947; Sec. 4, Ch. 215, L. 1955), relating to survey and planning activities, was repealed by Sec. 14, Ch. 77, Laws 1965.

69-3007 to 69-3016. Repealed.

Repeal

These sections (Secs. 8 to 17, Ch. 270, L. 1947; Secs. 5 to 10, Ch. 215, L. 1955; Sec. 68, Ch. 147, L. 1963; Secs. 5 to 12, Ch. 77, L. 1965), relating to hospital survey and construction, were repealed by Sec. 223, Ch. 197, Laws 1967.

69-3016.1. Repealed.

Repeal

This section (Sec. 13, Ch. 77, L. 1965), relating to discrimination in subsidized hospitals, was repealed by Sec. 223, Ch. 197, Laws 1967.

69-3017, 69-3018. Repealed.

Repeal

These sections (Sec. 18, Ch. 270, L. 1947; Sec. 1, Ch. 105, L. 1949; Sec. 11, Ch. 215, L. 1955), relating to state and federal participation in hospital construction, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 31—CESSPOOLS, SEPTIC TANKS, PRIVIES AND SEWAGE LAGOONS

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-3101 to 69-3112. Repealed.

Repeal

These sections (Secs. 1 to 7, Ch. 154, L. 1951; Secs. 1 to 5, Ch. 203, L. 1961), relating to sewage facilities, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 32—STATE BOARD OF HEALTH—MATERNAL AND CHILD HEALTH SERVICES—EDUCATIVE PROGRAM—SCHOOL NURSES—SUPERVISION BY BOARD—AUTHORITY OF COUNTIES AND SCHOOL BOARDS—SERVICES FOR CRIPPLED CHILDREN—EDUCATION FOR CHILDREN AND ADULTS IN USE AND ABUSE OF NARCOTICS

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-3201 to 69-3210. Repealed.

Repeal

These sections (Sec. 24, Ch. 264, L. 1955; Secs. 1 to 3, Ch. 197, L. 1963; Sec. 1, Ch. 106, L. 1965; Secs. 1, 2, Ch. 108, L. 1965), relating to maternal and child health protection, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 34—SANITARIANS

Section 69-3404. Fees.

69-3404. Fees. Applicants for registration shall pay a fee of twenty dollars ($20.00) at the time of making application. A sanitarian registered under the provisions of this act may renew his certificate by paying an annual fee as set by the board, but not to exceed ten dollars ($10.00). All fees collected shall be paid to the board of health and deposited by the board in the earmarked revenue fund for the use of the sanitarians registration council. All fees shall be due and payable on or before the first day of July for the current year for which the renewal certificate shall be issued. All certificates shall expire on the renewal date unless renewed prior to such date. Registrations which have lapsed for failure to pay renewal fees may be reinstated under regulations adopted by the council.

History: En. Sec. 4, Ch. 174, L. 1959; amd. Sec. 119, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "deposited by the board in the earmarked revenue fund for the use of the sanitarians registration council" for "held in a special fund and shall be used to defray the cost of administration of this act in accordance with a budget developed by the council and the board" at the end of the third sentence.

CHAPTER 35—MOTORBOAT AND VESSEL REGULATION

Section 69-3502. Definitions.
69-3505. Equipment.
69-3508.1. Discharge of waste from boat prohibited.
69-3508.2. Penalty for discharge of waste from boat.

69-3502. Definitions. As used in this act, unless the context clearly requires a different meaning:

(1) "Vessel": for purposes of registration "vessel" shall mean those watercraft described under section 3 of public law 85-911, H.R. 11078 unless otherwise defined by the fish and game commission of the state of Montana; as pertains to the safety regulations of this act "vessel" means every description of watercraft other than a seaplane on the water capable of being used as a means of transportation on water.

(2) to (6). * * * [Same as parent volume.]

(7) The word "board" shall mean the fish and game commission of the state of Montana in all sections of this act, except for section 69-3504, in which section the word "board" shall mean the board of equalization of the state of Montana.

History: En. Sec. 2, Ch. 285, L. 1959; amd. Sec. 1, Ch. 230, L. 1963.

Amendment

The 1963 amendment added the words "in all sections of this act, except for section 69-3504, in which section the word 'board' shall mean the board of equalization of the state of Montana" at the end of paragraph (7); and made a minor change in punctuation.

69-3505. Equipment. (1) Every vessel shall have aboard:

(a) One life preserver, buoyant vest, ring buoy or buoyant cushion of the type approved by the commandant of the United States coast guard

in good and serviceable condition for each person on board, provided, in boats under twenty-six (26) feet in length, that any person or persons, twelve (12) years of age or younger, occupying a vessel while such vessel is in motion, shall have a life preserver of a type approved by the commandant of the United States coast guard securely fastened to his or her person.

(b) When in operation during hours of darkness, a light sufficient to make the motorboat's or vessel's presence and location known to any and all other vessels within a reasonable distance.

(c) If carrying or using any inflammable or toxic fluid in any enclosure for any purpose, and if not an entirely open motorboat or vessel, an efficient natural or mechanical ventilation system which shall be capable of removing resulting gases prior to, and during the time such motorboat or vessel is occupied by any person.

(d) All motorboats shall carry the minimum number of coast guard approved hand portable fire extinguishers, the number of which is to be determined by the Montana fish and game commission or a coast guard approved fixed fire extinguishing system, except, that motorboats less than twenty-six (26) feet in length of open construction, propelled by outboard motors, and not carrying passengers for hire need not carry such portable fire extinguishers or fire extinguishing systems.

(e) Every motorboat or vessel shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with an efficient flame arrester, backfire trap, or other similar device.

(f) The board is hereby authorized to make rules and regulations modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation laws or with the navigation rules promulgated by the United States coast guard.

(g) No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

(2) No vessel shall be equipped in a manner which will permit discharge of inadequately treated sewage into waters of this state. No container of inadequately treated sewage shall be placed, left or discharged in or near waters of this state by anyone at any time. All toilets located on any vessel operated on waters of this state shall have securely affixed to the interior discharge opening of them an operating treatment device or retaining tank meeting the standards established by the state board of health.

History: En. Sec. 5, Ch. 285, L. 1959; amd. Sec. 1, Ch. 138, L. 1961; amd. Sec. 2, Ch. 230, L. 1963; amd. Sec. 1, Ch. 169, L. 1965.

Amendments

The 1963 amendment added paragraphs (5), (6), and (7), now paragraphs (e), (f), and (g) of subsection (1).

The 1965 amendment designated the former text as subsection (1); redesignated the former numbered paragraphs as lettered paragraphs of subsection (1); and added subsection (2).

Effective Date

Section 3 of Ch. 230, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 9, 1963.

69-3508.1. Discharge of waste from boat prohibited. No person shall discharge or cause, permit or suffer to be discharged, any garbage, refuse, waste or sewage from any boat into or upon the waters of any stream, river or lake within the boundaries of the state of Montana.

History: En. Sec. 2, Ch. 169, L. 1965.

Title of Act

An act to prevent water pollution by prohibiting the discharge of sewage from vessels; and amending section 69-3505, R. C. M. 1947.

69-3508.2. Penalty for discharge of waste from boat. A person who is convicted of a violation of this act shall be punished by a fine of not more than twenty-five dollars ($25).

History: En. Sec. 3, Ch. 169, L. 1965.

CHAPTER 36—COUNTY AND MUNICIPAL AMBULANCE SERVICE

Section 69-3601. Establishment of service authorized—costs—petition.

69-3601. Establishment of service authorized — costs — petition. A county, city or town, acting through its governing body, may establish and maintain an ambulance service for such county, city or town. Any county, city or town may contract with any county, city or town to establish and maintain a joint ambulance service and to share the costs, such costs to be apportioned according to the benefits to accrue, the proportion to be paid by each to be fixed in advance by joint resolution by the respective governing bodies, if the governing body has received a petition signed by fifteen per centum (15%) of the electors registered to vote in the county, city or town at the last preceding general election, or in each of the counties, cities or towns wherein a joint ambulance service is being established. In addition to all other levies authorized by law, each county, city or town may levy an annual tax up to one (1) mill on the dollar of the taxable value of all taxable property within the county, city or town to defray the costs incurred in providing ambulance service.

History: En. Sec. 1, Ch. 238, L. 1961; amd. Sec. 1, Ch. 162, L. 1967.

Amendments

The 1967 amendment ended the first sentence after "city or town"; substituted "Any county, city or town may contract with any county" for "and it may also contract with another county" after "county or town" to begin the second sentence; and substituted the passage beginning "fifteen per centum (15%) of the electors" after "signed by" to the end of this section for "fifty per centum (50%) of the taxpayers who are listed on the last-completed assessment roll."

Effective Date

Section 2 of Ch. 162, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 27, 1967.

CHAPTER 37—ACCOMMODATION OF HANDICAPPED PERSONS IN PUBLIC BUILDINGS

Section 69-3701. Application of act.
69-3702. Scope and purpose.
69-3703. Definitions.
69-3704. Design criteria.
69-3705. Site development.
69-3706. Ramps.

69-3707. Entrances.
69-3708. Doors.
69-3709. Stairs.
69-3710. Floors.
69-3711. Toilet rooms.
69-3712. Water fountains.
69-3713. Public telephones.
69-3714. Elevators.
69-3715. Switches and controls.
69-3716. Identification for the blind.
69-3717. Warning signals.
69-3718. Hazards.
69-3719. Responsibility for enforcement.

69-3701. Application of act. (1) The standards and specifications set forth in this act shall apply to all buildings and facilities used by the public which are constructed in whole or in part by the use of state, county or municipal funds, or the funds of any political subdivision of the state. All such buildings and facilities constructed in this state after the effective date of this act from any one of these funds or any combination thereof shall conform to each of the standards and specifications prescribed herein except where the authority responsible for the proper construction for the particular governmental department, agency or unit concerned shall determine, after taking all circumstances into consideration, that full compliance with any particular standard or specification is impracticable.

(2) These standards and specifications shall be adhered to in those buildings and facilities under construction on the effective date of this act, unless the authority responsible for the construction shall determine that the construction has reached a state where compliance is impractical. This act shall apply to temporary or emergency construction as well as permanent buildings.

History: En. Sec. 1, Ch. 223, L. 1965.

Title of Act

An act to require that those buildings and facilities, constructed in the state by the use of state, county or municipal funds, shall adhere to the principles prescribed by this act in order to make these buildings and facilities accessible to, and useable by, the physically handicapped.

69-3702. Scope and purpose. (1) This act is concerned with nonambulatory disabilities, semiambulatory disabilities, sight disabilities, hearing disabilities, disabilities of inco-ordination and aging.

(2) It is intended to make all buildings and facilities covered by this act accessible to, and functional for, the physically handicapped to, through, and within their doors, without loss of function, space or facility where the general public is concerned.

History: En. Sec. 2, Ch. 223, L. 1965.

69-3703. Definitions. For the purposes of this act the following terms shall have the meanings as herein set forth: (1) "Nonambulatory disabilities" shall mean impairments that, regardless of cause or manifestation, for all practical purposes, confine individuals to wheel chairs.

(2) "Semiambulatory disabilities" shall mean impairments that cause individuals to walk with difficulty or insecurity. Individuals using braces

or crutches, amputees, arthritics, spastics and those with pulmonary and cardiac ills may be semiambulatory.

(3) "Sight disabilities" shall mean total blindness or impairments affecting sight to the extent that the individual functioning in public areas is insecure or exposed to danger.

(4) "Hearing disabilities" shall mean deafness or hearing handicaps that might make an individual insecure in public areas because he is unable to communicate or hear warning signals.

(5) "Disabilities of inco-ordination" shall mean faulty co-ordination or palsy from brain, spinal or peripheral nerve injury.

(6) "Aging" shall mean those manifestations of the aging processes that significantly reduce mobility, flexibility, co-ordination and perceptiveness but are not accounted for in the aforementioned categories.

(7) "Standard," when this term appears in small letters, shall be descriptive and shall mean typical type.

(8) "Fixed turning radius, wheel to wheel" shall mean the tracking of the caster wheels and large wheels of a wheel chair when pivoting on a spot.

(9) "Fixed turning radius, front structure to rear structure" shall mean the turning radius of a wheel chair, left front-foot platform to right rear wheel, or right front-foot platform to left rear wheel when pivoting on a spot.

(10) "Involved (involvement)" shall mean a portion or portions of the human anatomy or physiology, or both, that have a loss or impairment of normal function as a result of genesis, trauma, disease, inflammation or degeneration.

(11) "Ramps, ramps with gradients" shall mean ramps with gradients (or ramps with slopes) that deviate from what would otherwise be considered the normal level. An exterior ramp, as distinguished from a "walk," shall be considered an appendage to a building leading to a level above or below existing ground level. As such, a ramp shall meet certain requirements similar to those imposed upon stairs.

(12) "Walk, walks" shall mean a predetermined, prepared-surface, exterior pathway leading to or from a building or a facility, or from one exterior area to another, placed on the existing ground level and not deviating from the level of the existing ground immediately adjacent.

(13) "Appropriate number" shall mean the number of a specific item that would be reasonably necessary, in accord with the purpose and function of a building or a facility, to accommodate individuals with specific disabilities in proportion to the anticipated number of individuals with disabilities who would use a particular building or facility.

History: En. Sec. 3, Ch. 223, L. 1965.

69-3704. Design criteria. The following design criteria shall be applicable: (1) The collapsible-model wheel chair of tubular metal construction with plastic upholstery for back and seat is most commonly used. The standard model of all manufacturers falls within the following limits, which are used as the basis of consideration:

(a) Length: 42 inches
(b) Width, when open: 25 inches
(c) Height of seat from floor: 19½ inches
(d) Height of armrest from floor: 29 inches
(e) Height of pusher handles (rear) from floor: 36 inches
(f) Width, when collapsed: 11 inches

(2) The fixed turning radius of a standard wheel chair, wheel to wheel, is 18 inches. The fixed turning radius, front structure to rear structure, is 31.5 inches.

(3) The average turning space required by a person in a wheel chair (180 to 360 degrees) is 60 x 60 inches. A turning space of 63 x 56 inches may at times prove more workable and desirable.

(4) A minimum width of 60 inches is required for two individuals in wheel chairs to pass each other.

(5) In a wheel chair the average unilateral vertical reach is 60 inches and ranges from 54 inches to 78 inches.

(6) The average horizontal working (table) reach of a person in a wheel chair is 30.8 inches and ranges from 28.5 inches to 33.2 inches.

(7) The bilateral horizontal reach, both arms extended to each side, shoulder high, of a person in a wheel chair, ranges from 54 inches to 71 inches and averages 64.5 inches.

(8) An individual reaching diagonally (from a wheel chair) as would be required in using a wall-mounted dial telephone or towel dispenser, would make the average reach (on the wall) 48 inches from the floor.

(9) Most individuals ambulating on braces or crutches, or both, or on canes are able to manipulate within the specifications prescribed for wheel chairs, although doors present quite a problem at times. However, a crutch tip extending laterally from an individual is not obvious to others in heavily trafficked areas, and not as obvious or protective as a wheel chair and is, therefore, a source of vulnerability.

(10) On the average, individuals 5 feet 6 inches tall require an average of 31 inches between crutch tips in the normally accepted gaits.

(11) On the average, individuals 6 feet 0 inches tall require an average of 32.5 inches between crutch tips in the normally accepted gaits.

History: En. Sec. 4, Ch. 223, L. 1965.

69-3705. Site development. (1) The ground shall be graded, even contrary to existing topography, so that it attains a level with a normal entrance and will make a facility accessible to individuals with physical disabilities.

(2) Public walks shall be at least 48 inches wide and shall have a gradient not greater than 5 per cent. These walks shall be of a continuing common surface, not interrupted by steps or abrupt changes in level. Wherever walks cross other walks, driveways or parking lots they shall blend to a common level. A walk shall have a level platform at the top which is at least 5 feet by 5 feet, if a door swings out onto the platform or toward the walk. This platform shall extend at least 1 foot beyond each side of the doorway. A walk shall have a level platform at least 3 feet deep and 5 feet wide, if the door does not swing onto the platform or

toward the walk. This platform shall extend at least 1 foot beyond each side of the doorway.

(3) Spaces in parking lots that are accessible to the building or facility shall be set aside and identified for use by individuals with physical disabilities. An adequate parking space is one that is open on one side and which allows room for individuals in wheel chairs or individuals on braces and crutches to get in and out of an automobile onto a level surface, suitable for wheeling and walking. Parking spaces for individuals with physical disabilities when placed between two conventional diagonal or head-on parking spaces shall be 12 feet wide. Care in planning shall be exercised so that individuals in wheel chairs and individuals using braces and crutches are not compelled to wheel or walk behind parked cars. Consideration shall be given to the distribution of spaces for use by the disabled in accordance with the frequency and regularity of their parking needs. Walks shall be in conformity with section 5 [this section] of this act.

History: En. Sec. 5, Ch. 223, L. 1965.

69-3706. Ramps. (1) Where ramps with gradients are necessary or desired, they shall conform to the following specifications: A ramp shall not have a slope greater than 1 foot rise in 12 feet, or 8.33 per cent, or 4 degrees 50 minutes. A ramp shall have handrails on at least one side, and preferably two sides, that are 32 inches in height, measured from the surface of the ramp, that are smooth, that extend 1 foot beyond the top and bottom of the ramp, and that as far as practicable conform with American standard safety code for floor and wall openings, and toe boards as promulgated by the American Standards Association, Inc.

(2) A ramp shall have a surface that is nonslip. A ramp shall have a level platform at the top which is at least 5 feet by 5 feet, if a door swings out onto the platform or toward the ramp. This platform shall extend at least 1 foot beyond each side of the doorway. A ramp shall have a level platform at least 3 feet deep and 5 feet wide, if the door does not swing onto the platform or toward the ramp. This platform shall extend at least 1 foot beyond each side of the doorway. Each ramp shall have at least 6 feet of straight clearance at the bottom. Ramps shall have level platforms at 30 foot intervals for purposes of rest and safety and shall have level platforms wherever they turn.

History: En. Sec. 6, Ch. 223, L. 1965.

69-3707. Entrances. At least one primary entrance to each building shall be useable by individuals in wheel chairs. At least one entrance useable by individuals in wheel chairs shall be on a level that would make the elevators accessible.

History: En. Sec. 7, Ch. 223, L. 1965.

69-3708. Doors. Doors shall have a clear opening of no less than 32 inches when open and shall be operable by a single effort. The floor on the inside and outside of each doorway shall be level for a distance of 5 feet from the door in the direction the door swings and shall extend 1 foot beyond each side of the door. Sharp inclines and abrupt changes in

level shall be avoided at doorsills. As much as practicable, thresholds shall be flush with the floor.

History: En. Sec. 8, Ch. 223, L. 1965.

69-3709. Stairs. Stairs shall conform to standards of the American Standards Association, Inc., with the following additional considerations: Steps in stairs shall be designed wherever practicable so as not to have abrupt (square) nosing. Stairs shall have handrails 32 inches high as measured from the tread at the face of the riser. Stairs shall have at least one handrail that extends at least 18 inches beyond the top step and beyond the bottom step. Steps should, wherever possible, and in conformation with existing step formulas, have risers that do not exceed 7 inches.

History: En. Sec. 9, Ch. 223, L. 1965.

69-3710. Floors. Floors shall wherever practicable have a surface that is nonslip. Floors on the same story shall be of a common level throughout or be connected by a ramp in accord with section 6 (1) [69-3706 (1)] through the first paragraph of section 6 (2) [69-3706 (2)], inclusive.

History: En. Sec. 10, Ch. 223, L. 1965.

69-3711. Toilet rooms. (1) An appropriate number of toilet rooms, in accordance with the nature and use of a specific building or facility, shall be accessible to, and useable by, the physically handicapped.

(2) Toilet rooms shall have space to allow traffic of individuals in wheel chairs, in accordance with section 4 [69-3704].

(3) Toilet rooms shall have at least one toilet stall that:

(a) Is 3 feet wide.

(b) Is at least 4 feet 8 inches, preferably 5 feet deep.

(c) Has a door (where doors are used) that is 32 inches wide and swings out.

(d) Has handrails on each side, 33 inches high and parallel to the floor, 1½ inches in outside diameter, with 1½ inches clearance between rail and wall, and fastened securely at ends and center.

(e) Has a water closet with the seat 20 inches from the floor.

(4) Toilet rooms shall have lavatories with narrow aprons, which when mounted at standard height are useable by individuals in wheel chairs, or shall have lavatories mounted higher, when particular designs demand, so that they are useable by individuals in wheel chairs.

(5) Mirrors and shelves shall be provided above lavatories at a height as low as practicable and no higher than 40 inches above the floor, measured from the top of the shelf and the bottom of the mirror.

(6) Toilet rooms for men shall have an appropriate number of floor or wall-mounted urinals with the opening of the basin 19 inches from the floor, or shall have floor-mounted urinals that are on level with the main floor of the toilet room.

(7) Toilet rooms shall have an appropriate number of towel racks, towel dispensers, and other dispensers and disposal units mounted no higher than 40 inches from the floor.

History: En. Sec. 11, Ch. 223, L. 1965.

69-3712. Water fountains. (1) An appropriate number of water fountains or other water-dispensing means shall be accessible to, and useable by, the physically disabled.

(2) Water fountains or coolers shall have up-front spouts and controls. Water fountains or coolers shall be hand-operated or hand and foot-operated.

History: En. Sec. 12, Ch. 223, L. 1965.

69-3713. Public telephones. (1) An appropriate number of public telephones shall be made accessible to, and useable by, the physically disabled.

(2) Such telephones shall be placed so that the dial and the hand-set can be reached by individuals in wheel chairs.

History: En. Sec. 13, Ch. 223, L. 1965.

69-3714. Elevators. Elevators shall be provided and shall be accessible to, and useable by, the physically disabled at all levels normally used by the general public. Elevator control buttons shall have identifying features for the benefit of the blind. Elevators shall allow for traffic by wheel chairs.

History: En. Sec. 14, Ch. 223, L. 1965.

69-3715. Switches and controls. Switches and controls for light, heat, ventilation, windows, draperies, fire alarms and all similar controls of frequent or essential use, shall be placed within the reach of individuals in wheel chairs.

History: En. Sec. 15, Ch. 223, L. 1965.

69-3716. Identification for the blind. Appropriate identification of specific facilities within a building used by the public is essential to the blind. Raised or recessed letters or numbers shall be used to identify rooms and offices. Such identification shall be placed on the wall, to the right or left of the door, at a height between 4 feet 6 inches and 5 feet 6 inches, measured from the floor, and preferably at 5 feet. Doors that are not intended for normal use, and that are dangerous if a blind person were to exit or enter by them, shall be made quickly identifiable to the touch by knurling the door handle or knob.

History: En. Sec. 16, Ch. 223, L. 1965.

69-3717. Warning signals. (1) Audible warning signals shall be accompanied by simultaneous visual signals for the benefit of those with hearing disabilities.

(2) Visual signals shall be accompanied by simultaneous audible signals for the benefit of the blind.

History: En. Sec. 17, Ch. 223, L. 1965.

69-3718. Hazards. (1) Every effort shall be exercised to obviate hazards to individuals with physical disabilities.

(2) Access panels or manholes in floors, walks and walls can be extremely hazardous, particularly when in use, and shall be avoided where possible.

(3) When manholes or access panels are open and in use, or when an open excavation exists on a site, particularly when it is approximate to normal pedestrian traffic, barricades shall be placed on all open sides, at least 8 feet from the hazard, and warning devices shall be installed in accord with the provisions of subsection (2) of this section.

(4) Low-hanging door closers that are within the opening of a doorway when the door is open, or that protrude hazardously into regular corridors or traffic ways when the door is closed, shall be avoided.

(5) Low-hanging signs, ceiling lights and similar objects or signs and fixtures that protrude into regular corridors or traffic ways shall be avoided. A minimum height of 7 feet, measured from the floor, shall be had.

(6) Lighting on ramps shall be at least equal to that prescribed by the specifications of American Standards Association, Inc. Exit signs shall be in accordance with specifications of American Standards Association, Inc., except as modified by section 7 [69-3707] of this act.

History: En. Sec. 18, Ch. 223, L. 1965.

69-3719. Responsibility for enforcement. The responsibility for enforcement of this act shall be as follows: (1) Where state school funds are utilized—state superintendent of public instruction.

(2) Where state funds are utilized—state controller.

(3) Where funds of counties, municipalities or other political subdivisions are utilized—by the governing bodies thereof.

History: En. Sec. 19, Ch. 223, L. 1965.

CHAPTER 38—PUBLIC SWIMMING POOLS AND BATHING PLACES

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-3801 to 69-3813. Repealed.

Repeal

These sections (Secs. 1 to 13, Ch. 161, L. 1965), relating to public bathing places, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 39—AIR POLLUTION

Section 69-3904. Short title.
69-3905. Declaration of policy and purpose.
69-3906. Definitions.
69-3907. Administration—state board of health.
69-3908. Air pollution control advisory council—members tenure—compensation—meetings—minutes—powers.
69-3909. Powers of board.
69-3910. Classification and reporting.
69-3911. Permits.
69-3912. Inspections.
69-3913. Emissions prohibited.
69-3914. Enforcement.
69-3915. Emergency procedure.
69-3916. Variances.
69-3917. Hearings and judicial review.
69-3918. Confidentiality of records.
69-3919. Local air pollution control programs.
69-3920. State and federal aid.

69-3921. Penalties.
69-3922. Limitations.
69-3923. Classification of property for taxation.

69-3901 to 69-3903. Repealed.

Repeal

These sections (Secs. 1 to 3, Ch. 254, L. 1965), relating to air pollution, were repealed by Sec. 22, Ch. 313, Laws 1967.

69-3904. Short title. This act shall be known and may be cited as the "Clean Air Act of Montana."

History: En. Sec. 1, Ch. 313, L. 1967.

Title of Act

An act providing for the conservation of the air resouces of the state; providing for prevention, abatement, and control of air pollution; providing penalties for violation; and repealing sections 69-3901, 69-3902, and 69-3903, R. C. M. 1947.

69-3905. Declaration of policy and purpose. (1) It is hereby declared to be the public policy of this state and the purpose of this act to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

(2) It is also declared that local and regional air pollution control programs are to be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

(3) To these ends it is the purpose of this act to provide for a coordinated statewide program of air pollution prevention, abatement and control; for an appropriate distribution of responsibilities among the state and local units of government; to facilitate co-operation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdiction; and to provide a framework within which all values may be balanced in the public interest.

History: En. Sec. 2, Ch. 313, L. 1967.

69-3906. Definitions. As used in this act: (1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property, or conduct of business.

(3) "Emission" means a release into the outdoor atmosphere of air contaminants.

(4) "Person" means any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate or any other legal entity.

(5) "Advisory council" means the air pollution control advisory council created by this act.

(6) "Director" means the director of air pollution control, a position created by this act.

(7) "Board" means the state board of health.

History: En. Sec. 3, Ch. 313, L. 1967.

69-3907. Administration—state board of health. The state board of health shall have responsibility for the administration of this act and shall appoint a director of air pollution control to assist the board in its administration hereunder.

(1) The director shall be a person with at least two (2) years' experience or training in the field of air pollution control, experienced in administrative work and procedures, and he must be a graduate in engineering, medicine, or in physical, chemical or biological sciences.

(2) The salary of the director will be set and paid by the board.

(3) The powers and duties of the director shall be established and prescribed by the board in its rules, regulations and standards.

(4) The director may delegate to any employee of the board such duties and functions as he deems necessary for the proper and efficient administration of this act, and the director shall have authority, with the approval of the board, to hire additional employees and to discharge same for cause.

History: En. Sec. 4, Ch. 313, L. 1967.

69-3908. Air pollution control advisory council—members tenure—compensation — meetings — minutes — powers. (1) There is hereby created an air pollution control advisory council. The advisory council shall consist of eleven (11) members as follows:

The executive officer of the state board of health; and ten (10) members to be appointed by the governor as follows: a representative of labor; a representative of agriculture; a representative of the manufacturing industry; a representative of the fuel industry; a practicing physician licensed in Montana; a practicing veterinarian licensed in Montana; a practicing registered professional chemical or environmental engineer; a meteorologist; a conservationist; and an urban planning consultant. The chairman shall be elected by the advisory council from among this number.

(2) Members are appointed by the governor with the advice and consent of the senate. The terms of members shall be four (4) years except that of the initially appointed members, two (2) shall serve for one (1) year, two (2) shall serve for two (2) years, three (3) shall serve for three (3) years and three (3) shall serve for four (4) years as designated by the governor at the time of making the appointment.

(3) No additional compensation shall be allowed any members of the advisory council for services rendered who are employed by the state government. The ten (10) members appointed by the governor to serve on the advisory council shall each be paid, in addition to actual travel expenses, twenty-five dollars ($25) per day for each day of actual services in the performance of their duties, and all members of the advisory council shall be reimbursed for travel and other necessary expenses incurred in their official duties as members of the advisory council. All expenses of members who are otherwise in the employ of the state government shall be paid from the appropriation to their respective agencies.

The expenses and per diem of the members who are appointed by the governor shall be paid from funds made available to the state board of health.

(4) The advisory council shall hold at least two (2) regular meetings each calendar year and shall keep a summary record of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairman and must be called by him upon receipt of a written request signed by two (2) or more members of the advisory council. Notice of the time and place for all meetings shall be given in advance to each member of the advisory council by the secretary. A majority of the members of the advisory council shall constitute a quorum.

(5) The secretary of the advisory council shall be a member of the staff of the state board of health, designated by the executive officer of the board. The secretary shall keep all records of meetings of, and actions taken by, the council. He shall keep the advisory council advised as to actions taken by persons in response to recommendations and orders issued under authority of this act and shall perform other duties as determined by the advisory council, not inconsistent with rules, regulations, and policies adopted by authority of this act or specific authority otherwise given the advisory council.

(6) The advisory council may consider standards, rules, and regulations as provided in section 10 [69-3913] of this act and any other matter related to the purposes of the act, which may be submitted to it by the board. It may make recommendations to the board on its own initiative concerning the administration of this act.

History: En. Sec. 5, Ch. 313, L. 1967.

69-3909. Powers of board. In addition to any other powers conferred on it by law the board shall:

(1) Adopt, amend, and repeal rules implementing and consistent with the provisions of this act.

(2) Hold hearings relating to any aspect of or matter in the administration of this act, at any place or places designated by the board. The board may designate the director as the hearing officer at any hearing set by the board and authorize him to make rulings on evidence and conduct of the hearing. The board or the director as hearing officer may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) Issue such orders as may be necessary to effectuate the purposes of this act and enforce them by all appropriate administrative and judicial proceedings.

(4) Require access to records relating to emissions.

(5) Secure necessary scientific, technical, administrative, and operational service, including laboratory facilities, by contract or otherwise.

(6) Prepare and develop a comprehensive plan or plans for the prevention, abatement, and control of air pollution in this state.

(7) Encourage voluntary co-operation by persons and affected groups to achieve the purposes of this act.

(8) Encourage local units of government to handle air pollution problems within their respective jurisdictions on a co-operative basis, and to provide technical and consultative assistance therefor. If local programs are financed with public funds, the board may contract with the local government to share the cost of the program. However, the state share may not exceed thirty per cent (30%) of the total cost.

(9) Encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, preventions, abatement, and control.

(10) Determine by means of field studies and sampling the degree of air contamination and air pollution in the state and the several parts thereof.

(11) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and the several parts thereof, and make recommendations to appropriate public and private bodies with respect thereto.

(12) Establish ambient air quality standards for the state as a whole within ninety (90) days of passage and approval of this act.

(13) Collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution.

(14) Advise, consult, contract, and co-operate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups.

(15) Consult, upon request, with any person proposing to construct, install or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device, or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this act, rules in force pursuant thereto, and any other provision of law.

(16) Accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out any of the functions of this act. Funds received by the board pursuant to this section shall be deposited in the state treasury to the account of the board.

History: En. Sec. 6, Ch. 313, L. 1967.

69-3910. Classification and reporting. (1) The board may classify air contaminant sources which in its judgment may cause or contribute to air pollution according to levels and types of emissions and other characteristics which relate to air pollution, and may require reporting for any such class or classes. Such classifications shall be made with special reference to effects on health, economic and social factors, and physical effects on property, and may be applied to the state as a whole or to any designated area.

(2) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the board may require reporting shall make reports containing such information as may be required concerning location, size and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and any other matter relevant to air pollution which is available or reasonably capable of being assembled.

History: En. Sec. 7, Ch. 313, L. 1967.

69-3911. Permits. (1) The board may, by rule or regulations, prohibit the installation, alteration, or use of any machine, equipment, device or other article which it finds may cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants, unless a permit therefor has been obtained from it.

(2) The board may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary.

(3) The board shall provide for the issuance, suspension, revocation, and renewal of any permits which it may require pursuant to this section.

(4) If a permit is required, the board must decide within ninety (90) days after receiving application therefor, whether or not the permit will issue. If no decision is rendered within that time, permission shall be deemed to have been granted.

History: En. Sec. 8, Ch. 313, L. 1967.

69-3912. Inspections. (1) Any duly authorized officer, employee, or representative of the board may enter and inspect, at any reasonable time, any property, premises, or place, except a private residence, on or at which an air contaminant source is located or is being constructed or installed for the purpose of ascertaining the state of compliance with this act and rules in force pursuant thereto.

(2) No person shall refuse entry or access to any authorized representative of the board who requests entry for purposes of inspection, and who presents appropriate credentials. No person shall obstruct, hamper, or interfere with any such inspection.

(3) At his request, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

History: En. Sec. 9, Ch. 313, L. 1967.

69-3913. Emissions prohibited. (1) The board may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate or control air pollution. Except as otherwise provided in or pursuant to this section, such levels, concentrations, or quantities shall be controlling and no emission in excess thereof shall be lawful.

(2) In any area where the concentration of air pollution sources or of population, or where the nature of the economy of or land and its uses so require, the board may fix more stringent requirements governing

the emission of air pollutants than those in effect pursuant to subsection (1) of this section.

(3) The board may by rule use any widely recognized measuring system for measuring emission of air contaminants.

(4) Should federal minimum standards of air pollution be set by federal law, the board may, if necessary in some localities of this state, set more stringent standards by rule or regulation.

History: En. Sec. 10, Ch. 313, L. 1967.

69-3914. Enforcement. (1) Whenever the board has reason to believe that a violation of any provision of this act or rule made pursuant thereto has occurred, it may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this act or rule alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order to take necessary corrective action within a reasonable period of time stated in the order. Any such order shall become final unless, no later than thirty (30) days after the date the notice is received, the person or persons named therein request in writing a hearing before the board. Upon receipt of such request, the board shall hold a hearing.

(2) If, after a hearing held pursuant to subsection (1) of this section, the board finds that a violation or violations have occurred, it shall either affirm or modify any order previously issued, or issue an appropriate order or orders for the prevention, abatement, or control of the emissions involved or for the taking of such other corrective action as it may deem appropriate. If, after hearing on an order contained in a notice the board finds that no violation is occurring, it shall rescind the order. Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the emissions.

(3) In lieu of issuing the order provided for in subsection (1) of this section, the board may either:

(a) Require that the alleged violator or violators appear before it for a hearing at a time and place specified in the notice, and answer the charges complained of; or

(b) Initiate action pursuant to section 18 [69-3921] of this act.

(4) Nothing in this act shall prevent the board from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(5) In connection with any hearing held pursuant to this section, the board may, and upon application by any party shall, compel the attendance of witnesses and the production of evidence on behalf of all parties.

History: En. Sec. 11, Ch. 313, L. 1967.

69-3915. Emergency procedure. (1) Any other provisions of law to the contrary nothwithstanding, if the director finds that a generalized condition of air pollution exists and that it creates an emergency requir-

ing immediate action to protect human health or safety, the director shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants. Upon issuance of any such order, the director shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of such hearing, and without adjournment thereof, the board shall affirm, modify, or set aside the order of the director.

(2) In the absence of any such generalized condition as that referred to in subsection (1) of this section, if the director finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to human health or safety, he may order the person or persons responsible for the operation or operations in question to reduce or discontinue emissions immediately, without regard for the provision of section 11 [69-3914] of this act. In such event, the requirements for hearing, and affirmance, modification, or setting aside of orders set forth in subsection (1) of this section shall apply.

(3) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, whether such power is conferred by statute or constitutional provisions or inheres in the office.

History: En. Sec. 12, Ch. 313, L. 1967.

69-3916. Variances. (1) Any person who owns or is in control of any plant, building, structure, process or equipment may apply to the board for an exemption or partial exemption from rules or regulations governing the quality, nature, duration or extent of emissions of air pollutants. The application shall be accompanied by such information and data as the board may require. The board may grant such exemption or partial exemption if it finds that:

(a) The emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) Compliance with the rules or regulations from which exemption is sought would produce hardship without equal or greater benefits to the public.

(2) No exemption or partial exemption shall be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) No exemption or partial exemption pursuant to this section shall be granted for a period to exceed one (1) year, but any such exemption or partial exemption may be renewed for like periods if no complaint is made to the board on account thereof or if, such complaint having been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty (60) days prior to the expiration of the exemption or partial exemption. Immediately prior to application for renewal the applicant shall give public notice of such application in accordance with

rules and regulations of the board. Any renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (a) of this section.

(4) An exemption, partial exemption or renewal thereof shall not be a right of the applicant or holder thereof but shall be in the discretion of the board. However, any person adversely affected by an exemption, partial exemption or renewal granted by the board may obtain judicial review thereof as provided by section 14 [69-3917] of this act.

(5) Nothing in this section and no exemption, partial exemption or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of section 12 [69-3915] of this act to any person or his property.

History: En. Sec. 13, Ch. 313, L. 1967.

69-3917. Hearings and judicial review. (1) No rule and no amendment or repeal thereof shall take effect except after public hearing on due notice, and after the advisory council has been afforded not less than thirty (30) days prior to publication of the proposed text to comment thereon. Such notice shall be given by public advertisement not less than twenty (20) or more than thirty (30) days prior to the date set for such hearing.

(2) Nothing in this section shall be construed to require a hearing prior to the issuance of an emergency order pursuant to section 12 [69-3915] of this act.

(3) Any person aggrieved by any order of the board or local control authority may apply for rehearing upon one or more of the following grounds, and upon no other grounds:

(a) The board or local control authority acted without or in excess of its powers;

(b) The order was procured by fraud;

(c) The order is contrary to the evidence;

(d) The applicant has discovered new evidence, material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing;

(e) Competent evidence was excluded to the prejudice of the applicant. The petition must be in such form and filed in such time as the board shall prescribe.

(4) (a) Within thirty (30) days after the application for rehearing is denied, or, if the application is granted, within thirty (30) days after the decision on the rehearing, any party aggrieved thereby may appeal to the district court of any judicial district of the state which is the situs of property affected by the order.

(b) The appeal shall be taken by serving a written notice of appeal upon the executive officer of the board, which service shall be made by the delivery of a copy of the notice to such officer, and by filing the original with the clerk of the court to which the appeal is taken. Immediately upon service upon the board, the board shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board. Immediately upon receiving the certified record, the district

court shall fix a day for filing of briefs and hearing arguments on the cause, and shall cause a notice of the same to be served upon the board and the appellant.

(c) The court shall hear and decide the cause upon the record of the board. The court shall determine whether or not the board regularly pursued its authority, whether or not the findings of the board were supported by substantial competent evidence and whether or not the board made errors of law prejudical to the appellant.

(5) Either the board [or] the person aggrieved may appeal from the decision of the district court to the supreme court. The proceedings before the supreme court shall be limited to a review of the record of the hearing before the board and of the district court's review of that record.

History: En. Sec. 14, Ch. 313, L. 1967.

69-3918. Confidentiality of records. (1) Any records or other information concerning air contaminant sources which are furnished to or obtained by the board, and which, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely his competitive position, shall be only for the confidential use of the board in the administration of this act, unless the owner shall expressly agree to their publication or availability to the general public.

(2) Nothing contained in this section shall be construed to prevent the use of such records or information by the board in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere, provided that such analyses or summaries do not identify any owner or operator or reveal any information made otherwise confidential by the provisions of this section.

History: En. Sec. 15, Ch. 313, L. 1967.

69-3919. Local air pollution control programs. (1) Any municipality or county may establish a local air pollution control program upon being petitioned by fifteen per cent (15%) of the qualified electors within its jurisdiction, and may thereafter administer within its jurisdiction said air pollution control program which:

(a) Provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those imposed by sections 10, 12 and 13 [69-3913, 69-3915 and 69-3916] of this act and rules issued thereunder;

(b) Provides for the enforcement of such requirements by appropriate administrative and judicial process;

(c) Provides for administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its program;

(d) Provided that such program shall be consistent with the intent and purposes of this act and is approved by the board after a public hearing conducted according to the provisions of section 6 [69-3909] of this act.

(2) If the board finds that the location, character, or extent of particular concentrations of population, or air contaminant sources, or geographic, topographic, or meteorological considerations, or any combinations

of any of the foregoing, are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which such program is necessary and require it as the only acceptable alternative to direct state administration.

(3) (a) If the board has reason to believe that an air pollution control program in force pursuant to this section is inadequate to prevent and control air pollution in the jurisdiction to which such program relates, or that the program is being administered in a manner inconsistent with the requirements of this act, the board shall, on due notice, conduct a hearing on the matter.

(b) If, after the hearing, the board determines that the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates, or that it is not accomplishing the purposes of this act, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed sixty (60) days.

(c) If the jurisdiction fails to take such measures within the time required, the board shall administer within such jurisdiction all of the provisions of this act. The board's control program shall supersede all municipal or county air pollution laws, regulations, ordinances, and requirements in the affected jurisdiction. The cost of such a program shall be a charge on the municipality or county.

(4) If the board finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may assume and retain control over that class of air contaminant source. No charge shall be assessed against the jurisdiction therefor. Findings made pursuant to this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(5) Any jurisdiction in which the board administers its air pollution control program pursuant to subsection (3) of this section may with the approval of the board establish or resume an air pollution control program which meets the requirements of subsection (1) of this section.

(6) Any municipality or county may administer all or part of its air pollution control program in co-operation with one (1) or more municipalities or counties of this state or of other states.

(7) Nothing in this act shall be construed to supersede or oust the jurisdiction of any local air pollution control program in operation on the effective date of this act, provided that within two (2) years from such date any such program meets all requirements of this act for a local air pollution control program.

History: En. Sec. 16, Ch. 313, L. 1967.

69-3920. State and federal aid. (1) Any local air pollution control program meeting the requirements of this act and rules made pursuant thereto shall be eligible for state aid in an amount equal to thirty per cent (30%) of the locally funded annual operating cost thereof.

(2) Subdivisions of the state may make application for, receive, administer, and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control, provided that any such application is first submitted to and approved by the board. The board shall approve any such application if it is consistent with this act and any other applicable requirements of law.

History: En. Sec. 17, Ch. 313, L. 1967.

69-3921. Penalties. (1) Any person who violates any provision of this act, or any rule in force thereunder or any order made pursuant thereto, other than section 15 [69-3918], shall be guilty of an offense and subject on account thereof to a fine not to exceed one thousand dollars ($1000). Each day of violation shall constitute a separate offense.

(2) Any person who willfully violates section 15 [69-3918] of this act shall be guilty of an offense and subject on account thereof to a fine not to exceed one thousand dollars ($1000).

(3) Action pursuant to subsections (1) or (2) of this section shall not be a bar to enforcement of this act, or of rules or orders made pursuant thereto, by injunction or other appropriate remedy. The board may institute and maintain in the name of the state any and all such enforcement proceedings.

(4) Nothing in this act shall be construed to abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of any person to damage or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding therefor.

(5) All fines collected shall be deposited to the state general fund.

History: En. Sec. 18, Ch. 313, L. 1967.

69-3922. Limitations. Nothing in this act shall be construed to:

(1) Grant to the board any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops.

(2) Affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution.

(3) Supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety.

History: En. Sec. 19, Ch. 313, L. 1967.

69-3923. Classification of property for taxation. (1) Facilities, machinery or equipment, attached or unattached to real property, utilized to reduce, eliminate, control or prevent air pollution, shall be classified as Class Seven (7) for the purpose of taxation under the provisions of section 84-301.

(2) The decision, whether the facilities, machinery or equipment are utilized to reduce, eliminate, control or prevent air pollution, shall be made by the director and approved by the state board of equalization.

History: En. Sec. 20, Ch. 313, L. 1967.

Separability Clause

Section 21 of Ch. 313, Laws 1967 read: "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 22 of Ch. 313, Laws 1967 read "Sections 69-3901, 69-3902, and 69-3903, R. C. M. 1947, are hereby repealed."

CHAPTER 40—REFUSE DISPOSAL AREAS

Section 69-4001. Legislative findings and policy.
69-4002. Definitions.
69-4003. Dumping in an unlicensed area is prohibited.
69-4004. License required.
69-4005. State board of health to approve disposal area.
69-4006. Revocation of or refusal to renew license.
69-4007. Rules and regulations—inspections and recommendations.
69-4008. Landowner's rights preserved—publicly operated disposal areas.
69-4009. Penalty for violations.
69-4010. Repeal of conflicting acts—acts preserved.

69-4001. Legislative findings and policy. It is hereby found and declared that the health and welfare of Montana citizens are being endangered by improperly operated refuse disposal areas. It is declared the public policy of this state to control refuse disposal areas to protect the public health and safety.

History: En. Sec. 1, Ch. 35, L. 1965.

Title of Act

An act providing for the protection of the public health by establishing controls of refuse disposal areas, defining terms used in the act, prohibiting dumping in unlicensed areas, requiring a license to be obtained from the local, county or district health officer, requiring the state board of health to approve disposal areas, authorizing revoking the license, authorizing the state board of health to promulgate rules and regulations, excluding refuse disposal by an individual of his own refuse on his own property from this act, eliminating the payment of an annual fee by governmental agencies, setting forth payments, repealing all acts and parts of acts in conflict with this act.

69-4002. Definitions. Terms used in this act shall be defined as follows: (1) "Garbage," putrescible animal and vegetable wastes resulting from handling, preparation, cooking and consumption of food.

(2) "Refuse," all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings and solid market and solid industrial wastes.

(3) "Rubbish," nonputrescible solid wastes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, abandoned automobiles, tin cans, wood, glass, bedding, crockery and similar materials.

History: En. Sec. 2, Ch. 35, L. 1965.

69-4003. Dumping in an unlicensed area is prohibited. No person, partnership, company or corporation shall hereafter dispose of any garbage, rubbish or refuse in any place except as permitted under this act.

History: En. Sec. 3, Ch. 35, L. 1965.

69-4004. License required. Each year each person, partnership, company or corporation desiring to operate a refuse disposal area shall obtain

a license for operating same from the local, county or district board of health having jurisdiction. To obtain a license to operate a disposal area, application to the local, county or district board of health having jurisdiction, must be made on forms provided by it. The application shall contain the name and residence of the applicant, the location of the proposed disposal area and such other information as the state board of health may by regulation require. There shall be paid to the local, county or district board of health with each application for such license or for renewal of such license, an annual license fee of twenty-five dollars ($25). This fee is to be deposited in the general fund of the county in which the refuse disposal area is to be located.

History: En. Sec. 4, Ch. 35, L. 1965.

69-4005. State board of health to approve disposal area. Upon receipt of the application, the local, county or district board of health having jurisdiction shall notify the state board of health who will then cause to be made an inspection of the proposed site and determine if the proposed operation can comply with this act and rules and regulations adopted pursuant thereto. When the state board of health reports favorably upon the application, the local, county or district board of health having jurisdiction shall issue a license to the applicant. All licenses shall expire one year after issuance but may be renewed upon payment of an annual fee of twenty-five dollars ($25).

History: En. Sec. 5, Ch. 35, L. 1965.

69-4006. Revocation of or refusal to renew license. The local, county or distict board of health having jurisdiction may revoke or refuse to renew any license after reasonable notice and hearing if it finds that the disposal area is not operated in a sanitary manner, as set forth by this law and by the rules and regulations adopted under this law.

History: En. Sec. 6, Ch. 35, L. 1965.

69-4007. Rules and regulations—inspections and recommendations. The state board of health is authorized to promulgate rules and regulations for the operation of refuse disposal areas. Said regulations shall be prepared and published and shall contain sanitary standards for disposal areas. The state board of health shall cause all licensed disposal areas to be inspected and recommended to the local, county or district board of health action which may be taken to enforce the provisions of this act.

History: En. Sec. 7, Ch. 35, L. 1965.

69-4008. Landowner's rights preserved—publicly operated disposal areas. This act shall not be construed to prohibit any person from disposing of garbage, rubbish or refuse upon his own land as long as such disposal does not create a nuisance. Any incorporated city, town, rural improvement district or county may establish a disposal area and operate same without paying the annual license fee, but must meet all other requirements of this act.

History: En. Sec. 8, Ch. 35, L. 1965.

69-4009. Penalty for violations. Any person violating this act or regulations prescribed by the state board of health under this act, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than fifty dollars ($50), nor more than five hundred dollars ($500). Each day upon which a violation of this act occurs shall be considered a separate offense.

History: En. Sec. 9, Ch. 35, L. 1965.

69-4010. Repeal of conflicting acts—acts preserved. All acts and parts of acts in conflict herewith are hereby repealed, except that section 32-1014 and section 94-3542, R. C. M. 1947, shall in no way be affected by this act.

History: En. Sec. 10, Ch. 35, L. 1965.

Compiler's Notes

Section 32-1014, referred to in this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

Separability Clause

Section 11 of Ch. 35, Laws 1965 read "It is the intent of the legislative assembly that if a part of this is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect, and all valid applications that are separable from the invalid applications."

CHAPTER 41—STATE BOARD OF HEALTH

Section 69-4101. State department of health established.
69-4102. Definitions.
69-4103. State board of health—members—appointment—qualifications—terms.
69-4104. State board of health—officers—meetings—quorum—compensation.
69-4105. Administration of laws relating to public health by department.
69-4106. Functions, powers and duties of state board.
69-4107. Executive officer—appointment—compensation—qualifications—temporary executive order.
69-4108. Executive officer—removal—procedure.
69-4109. Executive officer—powers and duties.
69-4110. Functions, powers and duties of department.
69-4111. Legal adviser to state board and department.
69-4112. Quarantine measures—adoption and enforcement.
69-4113. Executive officer authorized to act for state board in emergency.
69-4114. Public officials and corporations to furnish public health information upon request.
69-4115. Information on infant morbidity and mortality—limited use—identity of persons studied confidential.
69-4116. Newborn infants—test for phenylketonuria required.
69-4117. Schoolhouses—rules for lighting, heating, ventilation and sanitary arrangements.
69-4118. Sanitary inspections of schoolhouses, churches and other facilities for assemblages of persons.

69-4101. State department of health established. There is a state department of health within the executive branch of state government.

History: En. Sec. 1, Ch. 197, L. 1967.

Title of Act

An act for the codification and general revision of the laws relating to the state board of health; amending sections 27-112 and 27-202, R. C. M. 1947, and repealing sections 69-101 through 69-103, 69-105, 69-105.1, 69-105.2, 69-105.3, 69-105.4, 69-107, 69-109 through 69-127, 69-201 through 69-208, 69-301, 69-303 through 69-319, 69-401 through 69-404, 69-501 through 69-536, 69-536.1, 69-536.2, 69-537 through 69-539, 69-601 through 69-609, 69-701 through 69-712, 69-801 through 69-817, 69-901, 69-902, 69-1001 through 69-1025, 69-1122 through 69-1138, 69-1201 through 69-1220, 69-1301 through 69-1320, 69-1326 through 69-1346, 69-2001 through 69-2004, 69-2201, 69-2202, 69-2301 through 69-2310, 69-2407 through 69-2421, 69-2501 through 69-2504, 69-2601 through 69-2603, 69-2901 through 69-2918, 69-3001 through 69-3004, 69-3007 through 69-3016, 69-3016.1, 69-3017, 69-

3018, 69-3101 through 69-3112, 69-3201 through 69-3210, 69-3801 through 69-3813, R. C. M. 1947.

Codification

Chapter 197, Laws 1967, contained the following preamble: "It is the intent of the legislative assembly that all nonamendatory sections of this bill be codified in Title 69, Revised Codes of Montana, 1947, with the subject matter under each heading assigned to a separate chapter of that title."

69-4102. Definitions. As used in this act [69-4101 to 69-5701], unless the context clearly indicates otherwise;

(1) "State board" means the state board of health;

(2) "Department" means the state department of health;

(3) "Executive officer" means the director of the state department of health;

(4) "Communicable disease" means a disease designated communicable by the state board.

History: En. Sec. 2, Ch. 197, L. 1967.

69-4103. State board of health—members—appointment—qualifications—terms. (1) The state board consists of seven (7) members appointed by the governor for terms of seven (7) years with the consent of the senate. An appointment to replace a member whose term has expired shall be for seven (7) years. An appointment to replace a member whose term has not expired shall be for the remainder of the term.

(2) Membership of the state board shall include:

(a) three (3) persons who have the degree of doctor of medicine;

(b) one (1) person who has the degree of doctor of dental surgery;

(c) three (3) persons who have demonstrated intelligent and active interest in the field of public health who do not hold the degree of doctor of medicine or doctor of dental surgery.

(3) Terms of members holding office when this act becomes effective shall not be affected.

History: En. Sec. 3, Ch. 197, L. 1967.

69-4104. State board of health—officers—meetings—quorum—compensation. (1) The state board shall elect a chairman and other necessary officers and may adopt bylaws governing meetings. The executive officer shall serve as secretary to the state board. Four (4) members constitute a quorum for the transaction of business.

(2) The state board shall meet once every two (2) months and may hold additional meetings on the call of the chair, at the request of the executive officer, or at the request of a majority of the members. If a member has three (3) unexcused absences from meetings in any calendar year, his position is vacant and the governor shall appoint a person to replace him.

(3) State board members shall receive twenty dollars ($20) a day and be reimbursed for actual and necessary expenses when attending meetings or in the discharge of other duties assigned by the state board.

(4) In suits or proceedings in which state board actions are the subject of inquiry, meetings shall be deemed to have been called and held unless the contrary is proven.

History: En. Sec. 4, Ch. 197, L. 1967.

69-4105. Administration of laws relating to public health by department. With policy guidance of the state board the department has responsibility for administration of laws relating to public health including but not limited to, laws on:

(1) industrial hygiene;
(2) tuberculosis control;
(3) vital statistics;
(4) local boards of health;
(5) venereal disease control;
(6) shoddy control;
(7) public and other water supplies;
(8) cadavers;
(9) hospitals, hospital related facilities, and long-term care facilities;
(10) hospital survey and construction;
(11) cesspools, septic tanks, privies, sewage lagoons, sewage treatment plants and stream pollution;
(12) public swimming pools and public bathing places;
(13) pure foods and drugs;
(14) insecticides, fungicides, and rodenticides;
(15) refuse disposal areas;
(16) communicable diseases;
(17) tourist camp grounds;
(18) hotels.

History: En. Sec. 5, Ch. 197, L. 1967.

69-4106. Functions, powers and duties of state board. (1) The state board shall:

(a) advise the executive officer in all public health matters;

(b) hold hearings, administer oaths, subpoena witnesses, and take testimony in all matters relating to the duties of the state board or the department;

(c) bring actions in court for enforcement of health laws and defend actions brought against the state board or department;

(d) after consultation with the executive officer, adopt and enforce rules and standards for carrying out provisions of section 5 [69-4105] of this act and for the preservation of public health and prevention of disease;

(e) make rules covering the qualifications and professional activities, duties, services, and administration of school and local public health nurses;

(f) make rules for the transportation of dead bodies;

(g) submit a written report of activities of the state board and department and recommendations for improvement of public health to the governor and legislative assembly prior to January 10 of each odd-numbered year.

(2) The state board may accept and expend federal funds available for public health services.

History: En. Sec. 6, Ch. 197, L. 1967.

69-4107. Executive officer — appointment — compensation — qualifications—temporary executive order. (1) The state board shall appoint the executive officer who is the chief executive and administrative officer of the department. The state board shall fix his salary.

(2) The executive officer shall:

(a) have a degree of doctor of medicine;

(b) have successfully completed at least one (1) year of graduate study in an approved school of public health;

(c) have had at least two (2) years experience as a full-time public health officer;

(d) be eligible for a license by the board of medical examiners;

(e) receive a license from the board of medical examiners not later than six (6) months after his appointment.

(3) The state board may oppoint a temporary executive officer for a period of not more than one (1) year. A person appointed temporary executive officer must be licensed to practice medicine in Montana, and must have at least five (5) years active experience in that profession.

(4) The state board may contract with a person to serve as executive officer, or may appoint an executive officer for a term of not more than ten (10) years.

History: En. Sec. 7, Ch. 197, L. 1967.

69-4108. Executive officer—removal—procedure. The executive officer may be removed in the following way:

(1) the state board shall present him with a written statement of the charges against him;

(2) twenty (20) or more days after written notice is given to the executive officer, the state board shall hold a hearing to consider the charges;

(3) before the executive officer may be removed, a majority of state board members must agree that the charges were sustained by evidence presented at the hearing.

History: En. Sec. 8, Ch. 197, L. 1967.

69-4109. Executive officer—powers and duties. (1) The executive officer shall:

(a) execute policies established by the board;

(b) not engage in the private practice of medicine;

(c) with approval of the state board, appoint employees of the department and fix their compensation under a merit system of personnel administration;

(d) direct public health programs and internal affairs of the department.

(2) The executive officer may employ persons on a temporary or part-time basis, or in a consulting capacity, who are not under a merit system of personnel administration.

History: En. Sec. 9, Ch. 197, L. 1967.

69-4110. Functions, powers and duties of department. With policy guidance of the state board, the department shall:

(1) establish divisions, sections, or units which are necessary to carry out the responsibilities of the department;

(2) study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(3) make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(4) at the request of the governor administer any federal health program for which responsibilities are delegated to states;

(5) inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary, and at other times on request of the governor;

(6) after each inspection made under subsection (5) of this section, submit a written report on sanitary conditions to the governor and to the director of institutions or executive secretary of the Montana university system and include recommendations for improvement in conditions, if necessary;

(7) advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(8) organize laboratory services and provide equipment and personnel for those services;

(9) develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(10) develop and administer a program to protect the health of mothers and children;

(11) conduct health education programs;

(12) supervise school and local public health nurses in the performance of their duties;

(13) consult with the superintendent of public instruction on health measures for schools;

(14) develop and administer a program for services to handicapped children including diagnosis, medical, surgical and corrective treatment, and after-care and related services;

(15) supervise local boards of health.

History: En. Sec. 10, Ch. 197, L. 1967.

69-4111. Legal adviser to state board and department. The attorney general is legal adviser to the state board and department. If the county attorney fails to act, with the approval of the attorney general the state board may retain special counsel and compensate him from general appropriations to the state board. Either the county attorney of any county where a cause of action arises or the state board may bring any action necessary to abate, restrain, or prosecute the violation of public health laws.

History: En. Sec. 11, Ch. 197, L. 1967.

69-4112. Quarantine measures—adoption and enforcement. With approval of the state board, the department may adopt and enforce quaran-

tine measures against any state, county, or municipality to prevent the spread of communicable disease. Any person who does not comply with quarantine measures shall, upon conviction, be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). Receipts from fines shall be deposited in the state general fund.

History: En. Sec. 12, Ch. 197, L. 1967.

69-4113. Executive officer authorized to act for state board in emergency. If a communicable disease endangers public health and the state board must meet to make a decision concerning the danger, the executive officer shall act for the state board until a meeting has been held.

History: En. Sec. 13, Ch. 197, L. 1967.

69-4114. Public officials and corporations to furnish public health information upon request. On request, employees and officers of firms and corporations and public officials shall furnish public health information to the department.

History: En. Sec. 14, Ch. 197, L. 1967.

69-4115. Information on infant morbidity and mortality—limited use—identity of persons studied confidential. (1) If information on infant morbidity and mortality will be used to reduce those problems, data relating to the condition and treatment of any person may be given to the department, Montana medical association, an allied society of the Montana medical association, a committee of a nationally organized medical society or research group, or to an in-hospital staff committee.

(2) A person furnishing information under subsection (1) of this section is immune from suit for damages arising from the release of the data or publication of findings and conclusions based on the data.

(3) Data supplied under subsection (1) of this section may be used or published only for advancing medical research or medical education in the interest of reducing infant morbidity or mortality. However, a summary of studies based on the data may be released for general publication.

(4) The identity of persons whose condition or treatment was studied is confidential and may not be revealed under any circumstances.

(5) Any data supplied or studies based on these data are privileged communciations and may not be used as evidence in any legal proceeding. Any attempt to use, or offer to supply the data or studies, without consent of the person treated or his legal representative, is prejudicial error resulting in a mistrial.

History: En. Sec. 15, Ch. 197, L. 1967.

69-4116. Newborn infants—test for phenylketonuria required. Persons in charge of any facility caring for newborn infants and persons responsible for the registration of births shall insure that each infant has a test for phenylketonuria administered under rules adopted by the state board.

History: En. Sec. 16, Ch. 197, L. 1967.

69-4117. Schoolhouses—rules for lighting, heating, ventilation and sanitary arrangements. The state board shall adopt rules for lighting,

heating, ventilation, plumbing and sanitary arrangements for schoolhouses. Before any schoolhouse is constructed, plans must be submitted to the department for approval. A schoolhouse must conform to the rules adopted by the state board before being used.

History: En. Sec. 17, Ch. 197, L. 1967.

69-4118. Sanitary inspections of schoolhouses, churches and other facilities for assemblages of persons. (1) The department shall make sanitary inspections of schoolhouses, churches, theaters, and other buildings or facilities where persons assemble. If the facility is found unsanitary, the department shall direct that conditions be corrected within a reasonable time. If the unsanitary conditions are not corrected within the time specified, the building or facility is a public nuisance.

(2) Either the state board or a local board of health shall bring an action to correct the unsanitary conditions in the way provided by law for abating a public nuisance.

History: En. Sec. 18, Ch. 197, L. 1967.

CHAPTER 42—INDUSTRIAL HYGIENE

Section 69-4201. "Occupational disease" defined.
69-4202. Hazardous conditions—correction or prevention.
69-4203. Functions, duties and powers of state department of health.
69-4204. Duty of physicians and others to report occupational disease case —reports private records.
69-4205. Penalty.

69-4201. "Occupational disease" defined. As used in this chapter "occupational disease" means an illness that:

(1) arises from the person's employment;

(2) is caused by exposure to a substance or industrial practice which is hazardous to health;

(3) has symptoms of an industrial disease which is known to have resulted from the same type of exposure in other cases;

(4) is not the result of a person's contacts or activities outside his employment.

History: En. Sec. 19, Ch. 197, L. 1967.

69-4202. Hazardous conditions—correction or prevention. The state board of health shall adopt rules and approve orders to correct or prevent conditions which are hazardous to health at any place of employment.

History: En. Sec. 20, Ch. 197, L. 1967.

69-4203. Functions, duties and powers of state department of health. The state department of health shall:

(1) make studies, make recommendations, and issue orders approved by the state board on industrial hygiene and occupational diseases;

(2) keep complete records of its studies, recommendations, or orders;

(3) investigate the conditions of work at any place of employment at any time;

(4) report the findings of investigations to the industry concerned and co-operate with the industry in preventing or correcting conditions which are hazardous to health;

(5) enforce provisions of this chapter, and rules adopted by the state board;

(6) prepare forms and instructions for reporting occupational diseases and furnish them to physicians, hospitals, clinics, industrial plants, and labor unions on request;

(7) investigate reports of deaths from occupational disease to determine the correctness of the report and the cause of the disease;

(8) at least once each year compile statistical summaries on occupational diseases reported to the department.

History: En. Sec. 21, Ch. 197, L. 1967.

69-4204. Duty of physicians and others to report occupational disease case—reports private records. (1) Before the eleventh day after discovery, every physician, person in charge of a hospital or clinic, or state employee shall report an occupational disease to the department. The report shall be on forms prescribed by the department and include:

(a) name and address of the diseased person;

(b) name and business address of the employer;

(c) business of the employer;

(d) place of the person's employment;

(e) length of time the person was employed at the place where he became ill;

(f) nature of the disease;

(g) other information required by the department.

(2) Reports made under this section are neither public records nor open to public inspection. They are not admissible as evidence in any legal action or at a hearing under workmen's compensation laws of this state.

History: En. Sec. 22, Ch. 197, L. 1967.

69-4205. Penalty. (1) A person is guilty of a misdemeanor if he:

(a) does not make a report required by this chapter;

(b) does not comply with a rule adopted by the state board;

(c) does not comply with an order approved by the state board;

(d) willfully makes a false statement in a report.

(2) On conviction, he shall be fined not more than five hundred dollars ($500).

History: En. Sec. 23, Ch. 197, L. 1967.

CHAPTER 43—TUBERCULOSIS CONTROL

Section 69-4301. Public policy of the state.
69-4302. Definitions.
69-4303. Rules for determination of tuberculosis—adoption by state board of health.
69-4304. Functions, powers and duties of state department.
69-4305. Application to require person to submit to examination for tuberculosis or be treated in hospital.

69-4306. Application to require examination—necessary allegations.
69-4307. Application to require examination—procedure for hearing.
69-4308. Findings of court—orders.
69-4309. Commitment to hospital on noncompliance with order for examination for tuberculosis.
69-4310. Order of commitment—warrant for transportation.
69-4311. Confinement in hospital—submission to treatment.
69-4312. Release from commitment—procedure to obtain.
69-4313. Release from hospital—notice of date.
69-4314. Transfer of person to another hospital—notice.
69-4315. Court costs, expenses and fees—payment.
69-4316. Transportation expenses—payment by county.
69-4317. Facilities for diagnosis and treatment of tuberculosis.

69-4301. Public policy of the state. It is the public policy of the state to:

(1) protect persons from the danger of tuberculosis in a communicable state;

(2) provide and maintain a comprehensive program for the prevention, abatement, and adequate control working toward eradication of the disease;

(3) co-operate with other state agencies and the federal government in carrying out these objectives.

History: En. Sec. 24, Ch. 197, L. 1967.

69-4302. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Local board" means a city, county, city-county or district board of health.

(2) "Tuberculosis" means a disease caused by the tubercle bacillus characterized by the production of tuberculous lesions.

History: En. Sec. 25, Ch. 197, L. 1967.

69-4303. Rules for determination of tuberculosis—adoption by state board of health. The state board of health shall adopt rules for the determination of tuberculosis in a communicable state.

History: En. Sec. 26, Ch. 197, L. 1967.

69-4304. Functions, powers and duties of state department. (1) Under policy guidance of the state board, the state department of health shall;

(a) accept, spend, and distribute federal funds available for tuberculosis control;

(b) collect and study data on the incidence of tuberculosis.

(2) Under policy guidance of the state board, the department may, if appropriate, contract with federal agencies or other state agencies for receipt and expenditure of federal funds.

History: En. Sec. 27, Ch. 197, L. 1967.

69-4305. Application to require person to submit to examination for tuberculosis or be treated in hospital. (1) If a person is reasonably suspected to have, or to have been exposed to, communicable tuberculosis, upon request of:

(a) a physician legally authorized to practice medicine in the state; or

(b) the department; or

(c) a local health officer; the department or a local board may apply for an order from the district court.

(2) The application shall request that the person be ordered to:

(a) submit to an examination for tuberculosis; or

(b) enter, or return to, a hospital for treatment if the person is a menace to public health.

History: En. Sec. 28, Ch. 197, L. 1967.

69-4306. Application to require examination—necessary allegations. (1) The application for an order provided for in section 28 [69-4305] of this act shall allege that the person:

(a) is suspected of having tuberculosis in a communicable state or has been exposed to communicable tuberculosis; is a menace to public health and has refused to be examined for tuberculosis as required by rules adopted by the state board; or

(b) is suffering from tuberculosis in a communicable state; is a menace to public health; has refused to enter, or has left, a hospital against the advice of a physician or health officer.

(2) The application shall state the names of witnesses by which facts alleged may be proved. At least one (1) witness shall be a physician.

History: En. Sec. 29, Ch. 197, L. 1967.

69-4307. Application to require examination—procedure for hearing. The procedure for a hearing on the application is:

(1) a summons stating the time and place of the hearing and a copy of the application is personally served on the person;

(2) the summons, with endorsement of the time of service, is filed with the district court prior to the hearing;

(3) not fewer than three (3) nor more than seven (7) days after service of the summons, a hearing is held in the district court;

(4) the court examines witnesses in attendance or others it wishes to call.

History: En. Sec. 30, Ch. 197, L. 1967.

69-4308. Findings of court—orders. Following the hearing, the court shall find that the allegations of the application are:

(1) true and order the person committed to a hospital; or

(2) true and order the person to submit to an examination for tuberculosis; or

(3) not true and order the person discharged.

History: En. Sec. 31, Ch. 197, L. 1967.

69-4309. Commitment to hospital on noncompliance with order for examination for tuberculosis. If a person fails to comply with an order to submit to an examination for tuberculosis within the time set, the court shall order him committed to a hospital.

History: En. Sec. 32, Ch. 197, L. 1967.

69-4310. Order of commitment—warrant for transportation. The court shall send certified copies of an order of commitment to the hospital and

the department or local board of health, and issue a warrant directed to the sheriff to transport the person to the designated hospital.

History: En. Sec. 33, Ch. 197, L. 1967.

69-4311. Confinement in hospital—submission to treatment. A person committed under section 31 or section 32 [69-4308 or 69-4309] of this act shall remain at the hospital until discharged, but he is not required to submit to medical or surgical treatment without written consent. If the person is incompetent, consent by his next of kin or guardian is required. If a person is a minor, consent by his parent or guardian is required. The person in charge of the hospital may use reasonable means to insure that the person committed remains at the hospital.

History: En. Sec. 34, Ch. 197, L. 1967.

69-4312. Release from commitment—procedure to obtain. (1) A person committed under section 31 [69-4308] or section 32 [69-4309] of this act may apply for a release. The procedure for the request and a hearing is:

(a) not fewer than one hundred eighty (180) days after commitment, the person applies to the court that ordered commitment requesting release;

(b) not fewer than three (3) nor more than seven (7) days after receipt of the request, the court holds a hearing.

(2) Following the hearing, the court:

(a) orders his discharge if it finds he no longer has tuberculosis in a communicable state; or

(b) dismisses the request if it finds he still has tuberculosis in a communicable state.

History: En. Sec. 35, Ch. 197, L. 1967.

69-4313. Release from hospital—notice of date. If the person in charge of the hospital and the department or local board that requested commitment concur that a person is no longer a menace to public health, the person shall be released from the hospital. The person in charge of the hospital shall file a notice of date of release with the court that ordered commitment.

History: En. Sec. 36, Ch. 197, L. 1967.

69-4314. Transfer of person to another hospital—notice. If it is in his best interest, a person may be transferred from the hospital to which he was committed to another hospital approved by the department. The person in charge of the hospital to which the person was committed shall notify the court that ordered commitment, and the department or local board that requested commitment, of the transfer.

History: En. Sec. 37, Ch. 197, L. 1967.

69-4315. Court costs, expenses and fees—payment. Court costs, expenses and all fees shall be paid by the treasurer of the county from which a person is committed. Expenses and fees shall be paid as follows:

(1) to sheriffs and their deputies the same fees allowed for similar services in district court;

(2) to physicians, not to exceed two (2), fees as set by the court;

(3) to witnesses the same fees and mileage provided for attendance in district court;

(4) to persons other than the sheriff or his deputies who transport a person to or from a hospital, witness fees and expenses as verified by the court.

History: En. Sec. 38, Ch. 197, L. 1967.

69-4316. Transportation expenses—payment by county. Expenses of transporting a person to a hospital for commitment shall be paid from the general fund of the county from which the person is committed. The charge for care, treatment, and maintenance at the state pulmonary disease hospital shall be at the rate fixed by law.

History: En. Sec. 39, Ch. 197, L. 1967.

69-4317. Facilities for diagnosis and treatment of tuberculosis. The state pulmonary disease hospital shall maintain facilities to carry out provisions of this chapter.

History: En. Sec. 40, Ch. 197, L. 1967.

CHAPTER 44—VITAL STATISTICS

Section 69-4401. Definitions.
69-4402. Statewide system of vital statistics established by state board of health.
69-4403. Functions, powers and duties of state department of health.
69-4404. Disclosure of data in vital statistics records—inspection of records with the permission of the state registrar.
69-4405. Disclosure of information to governmental agencies.
69-4406. Certified copy of certificate—effect of.
69-4407. Certified copy of certificate—fee.
69-4408. Disposition of fees from certified copies.
69-4409. Local registrars—appointment—supervision.
69-4410. Local registrars—deputies.
69-4411. Certificates—information required—disposition of copies.
69-4412. Certificates—prima facie evidence.
69-4413. Births—compulsory registration.
69-4414. Unattended birth—certificate prepared and filed by local registrar.
69-4415. Custodian of child of unknown parents—report filed with local registrar constitutes birth certificate.
69-4416. Birth certificate—delayed filing—proof required—amendment.
69-4417. Birth certificate—delayed filing—summary statement of evidence.
69-4418. Date and place of birth—judicial procedure to establish where birth certificate cannot be obtained.
69-4419. Delayed certificate of birth—probative value.
69-4420. Substitute birth certificate—procedure for issuance.
69-4421. Substitute birth certificate—procedure for recording.
69-4422. Illegitimate birth—permissible disclosure.
69-4423. Proof of legitimation—new birth certificate.
69-4424. Death certificate—time of filing.
69-4425. Death certificate—preparation and filing.
69-4426. Death without medical attendance—certificate—investigation.
69-4427. Delay in determining cause of death—permit for disposition of body.
69-4428. Dead body—disposition or removal—permit required.
69-4429. Body brought into state for burial or other disposition—record of permit.
69-4430. Institutions caring for persons—reports as to inmates or patients.
69-4431. Local registrars—fees.
69-4432. Marriage certificates—reports as to filing—recording fee.

69-4433. Registration of divorces, annulments and adoptions—certificates by clerks of courts.
69-4434. Decree of divorce or annulment of marriage—report by clerk of court—information supplied by parties to the action or their attorneys.
69-4435. Duty to furnish information.
69-4436. False statements or information contained in or mutilation of reports, records, or certificates relating to vital statistics—penalty.
69-4437. Handling and disposing of dead body without permit—refusal to give information—neglect or refusal to perform duties imposed by vital statistics law—penalty.

69-4401. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Vital statistics" includes the registration, preparation, transcription, collection, compilation and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, marital status and incidental supporting data.

(2) "Live birth" means the birth of a child who shows evidence of life after being entirely outside the mother.

(3) "Fetal death" means a birth after twenty (20) weeks of gestation which is not a live birth.

(4) "Dead body" means a lifeless human body or parts of a body from which it reasonably may be concluded that death occurred recently.

(5) "Person in charge of interment" means any person who places or causes to be placed, a dead body or the ashes after cremation, in a grave, vault, urn or other receptacle, or otherwise disposes of the body.

(6) "Physician" means a person legally authorized to practice medicine in this state.

(7) "State registrar" means the person designated by the executive officer of the department of health to have primary responsibility for vital statistics.

(8) "Local registrar" means a person appointed by the state registrar to act as his agent in administering this chapter within the area set forth in the letter of appointment.

History: En. Sec. 41, Ch. 197, L. 1967.

69-4402. Statewide system of vital statistics established by state board of health. The state board of health shall establish a statewide system of vital statistics and adopt rules for gathering, recording, using, and preserving vital statistics.

History: En. Sec. 42, Ch. 197, L. 1967.

69-4403. Functions, powers and duties of state department of health. The state department of health shall:

(1) divide the state into registration districts and change districts as necessary;

(2) gather, record, use, and preserve vital statistics;

(3) enforce rules adopted by the state board for gathering, recording, using and preserving vital statistics;

(4) give instructions and prescribe forms for gathering, recording, preserving, and using vital statistics.

History: En. Sec. 43, Ch. 197, L. 1967.

69-4404. Disclosure of data in vital statistics records—inspection of records with the permission of the state registrar. It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder unless disclosure is authorized by law and approved by the state board. The state registrar shall not permit inspection of the records or issue copies of any certificate unless he is satisfied that the applicant has a direct and tangible interest in the data recorded and that the information is necessary for the determination of personal or property rights. His decision is subject to review by the state board or a court.

History: En. Sec. 44, Ch. 197, L. 1967.

69-4405. Disclosure of information to governmental agencies. The state board may direct the state registrar to disclose information from his records to federal, state, county, or municipal agencies for use only as prescribed by the state board. If no identification of individuals is made, the state board may permit the use of data contained in vital statistics records for research purposes.

History: En. Sec. 45, Ch. 197, L. 1967.

69-4406. Certified copy of certificate—effect of. Subject to the limitations of sections 44, 45, 57, 59, and 62 [69-4404, 69-4405, 69-4417, 69-4419, and 69-4422] of this act, the state registrar shall furnish to any applicant a certified copy of a certificate, or part of it, upon request which shall be considered the same as the original.

History: En. Sec. 46, Ch. 197, L. 1967.

69-4407. Certified copy of certificate—fee. The state board shall prescribe a fee of not less than two dollars ($2) for a certified copy of certificates, or search of files. The state board may provide transcripts to the federal agency responsible for vital statistics if it is reimbursed for costs.

History: En. Sec. 47, Ch. 197, L. 1967.

69-4408. Disposition of fees from certified copies. Fees received for a certified copy of a certificate or a search of files shall be deposited in the state general fund.

History: En. Sec. 48, Ch. 197, L. 1967.

69-4409. Local registrars—appointment—supervision. The state registrar shall:

(1) with approval of the state board, appoint local registrars;

(2) supervise local registrars and other persons required to comply with this act.

History: En. Sec. 49, Ch. 197, L. 1967.

69-4410. Local registrars—deputies. With approval of the state registrar, local registrars may appoint deputies. Local registrars and deputies shall immediately report violations of this act or rules of the state board to the state registrar.

History: En. Sec. 50, Ch. 197, L. 1967.

69-4411. Certificates—information required—disposition of copies. (1) All certificates shall include information required by the state board.

(2) Local registrars shall forward original certificates to the state registrar, file a duplicate copy with the county clerk and recorder, and retain a triplicate copy.

(3) Local registrars shall not issue certified copies of certificates.

History: En. Sec. 51, Ch. 197, L. 1967.

69-4412. Certificates—prima facie evidence. Certificates filed within six (6) months after the time prescribed by the state board shall be prima facie evidence of the facts stated in the certificates. Data pertaining to the father of a child are prima facie evidence only if the alleged father is the husband of the mother. If the alleged father is not the husband of the mother, data pertaining to the alleged father are not evidence in any proceedings adverse to his interests, his heirs, next of kin, devisees, legatees, or other successors in interest.

History: En. Sec. 52, Ch. 197, L. 1967.

69-4413. Births—compulsory registration. Within the time prescribed by the state board, a birth certificate shall be filed with the local registrar of the district in which the birth occurred by:

(1) the physician, midwife, or other legally authorized person if the birth is attended;

(2) one of the parents if the birth is unattended.

History: En. Sec. 53, Ch. 197, L. 1967.

69-4414. Unattended birth—certificate prepared and filed by local registrar. (1) If a birth is unattended and neither parent is able to prepare a birth certificate, the local registrar shall:

(a) secure information from any person having knowledge of the birth;

(b) prepare and file a birth certificate;

(c) within the time prescribed by the state board, file a supplementary report furnishing information omitted from the original birth certificate if additional information is received.

(2) Birth certificates completed by a supplementary report shall not be considered "delayed" or "altered."

History: En. Sec. 54, Ch. 197, L. 1967.

69-4415. Custodian of child of unknown parents—report filed with local registrar constitutes birth certificate. (1) A person who assumes custody of a child of unknown parentage shall immediately file with the local registrar a written report which shall constitute a birth certificate. The report shall contain:

(a) the date and place of finding or assumption of custody;

(b) sex, color or race, and approximate age of the child;

(c) name and address of the person or institution with whom the child has been placed for care;

(d) name given to the child by the finder or person who assumes custody.

(2) The place where the child was found or custody assumed shall be the place of birth. The date of birth shall be determined by approxima-

tion. If the child is identified and a regular birth certificate is found or obtained, the report shall be sealed and may be opened only by court order.

History: En. Sec. 55, Ch. 197, L. 1967.

69-4416. Birth certificate—delayed filing—proof required—amendment. After the time prescribed by the state board, a person born in this state may file a birth certificate upon submitting proof as required by the state board or by any court. A person may amend a birth, death, or fetal death certificate upon submitting proof as required by the state board.

History: En. Sec. 56, Ch. 197, L. 1967.

69-4417. Birth certificate—delayed filing—summary statement of evidence. If birth certificates are accepted six (6) months or more after the time prescribed for filing or are altered by the state registrar after filing, the certificate shall show the date of the delayed filing or alteration and the mark "delayed" or "altered." A summary statement of the evidence in support of the delayed filing or alteration shall be endorsed on the certificate.

History: En. Sec. 57, Ch. 197, L. 1967.

69-4418. Date and place of birth—judicial procedure to establish where birth certificate cannot be obtained. If a person born in this state cannot obtain a birth certificate from the state registrar, the judicial procedure to establish date and place of birth is:

(1) the person petitions the district court for an order establishing a public record of his birth alleging the facts which he claims entitles him to the birth certificate;

(2) if the court is satisfied of the truth of the allegations in the petition, it makes an order reciting the facts, determining the time and place of birth, names of parents, and other relevant facts;

(3) the court order or a certified copy is recorded with the county clerk and recorder and with the state registrar;

(4) from the court order, the state registrar makes a transcript of the important facts and issues a delayed birth certificate.

History; En. Sec. 58, Ch. 197, L. 1967.

69-4419. Delayed certificate of birth—probative value. The probative value of a "delayed" or "altered" certificate of birth is determined by the judicial or administrative body before whom the certificate is offered as evidence.

History: En. Sec. 59, Ch. 197, L. 1967.

69-4420. Substitute birth certificate—procedure for issuance. The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is:

(1) before the sixteenth day of the month following the order of adoption the clerk of the district court shall forward a certified copy of the final order of adoption to the state registrar;

(2) the state registrar shall prepare a substitute certificate containing;

(a) the new name of the adopted person,

(b) the true date and place of birth and sex of the adopted person,

(c) statistical facts concerning the adoptive parents in place of the natural parents,

(d) the words "state registrar" substituted for the words "attendant's own signature,"

(e) dates of recording as shown on the original birth certificate.

History: En. Sec. 60, Ch. 197, L. 1967.

69-4421. Substitute birth certificate — procedure for recording. (1) The procedure for recording a substitute certificate of birth for a person born in Montana and adopted is:

(a) the state registrar shall send copies of the substitute certificate to the local registrar and to the county clerk and recorder;

(b) the local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in their files and forward copies of the original birth record to the state registrar;

(c) the state registrar shall seal original birth records and open them only upon demand of the adopted person if of legal age, or upon order of a court.

(2) Upon receipt of a certified copy of a court order annulling an adoption, the state registrar shall restore the original certificate to its place in his files and notify the local registrar and county clerk and recorder.

History: En. Sec. 61, Ch. 197, L. 1967.

69-4422. Illegitimate birth—permissible disclosure. Disclosure of illegitimacy of birth, or information from which illegitimacy can be ascertained, may be made only upon order of a court to determine personal or property rights. The information can be used only for that purpose.

History: En. Sec. 62, Ch. 197, L. 1967.

69-4423. Proof of legitimation—new birth certificate. Upon receipt of proof of legitimation, the state registrar shall prepare a new birth certificate in the new name of the person legitimated. Evidence upon which the new certificate is based and the original birth certificate shall be sealed and may be opened only upon court order. In case of legitimation, the state registrar shall substitute records in the way provided in section 61 [69-4421] of this act for records of adoption.

History: En. Sec. 63, Ch. 197, L. 1967.

69-4424. Death certificate—time of filing. (1) A death or fetal death certificate shall be filed with the local registrar prior to interment or other disposition of a dead body. If the place of death is known, the certificate shall be filed within three (3) days after the occurrence is known. If the place of death or fetal death is unknown, the certificate shall be filed within twenty-four (24) hours after the occurrence is known.

(2) If a state resident dies outside the county of his residence, the clerk and recorder shall send a certified copy of the death certificate to

the clerk and recorder of the deceased's county of residence. The copy shall be considered the same as the original.

History: En. Sec. 64, Ch. 197, L. 1967.

69-4425. Death certificate—preparation and filing. A person in charge of interment shall:

(1) obtain personal data required by the state board from persons best qualified to supply the data and enter it on the death or fetal death certificate;

(2) present the death certificate to the physician last in attendance upon the deceased or the coroner having jurisdiction who shall certify the cause of death according to his best knowledge and belief; or

(3) present the fetal death certificate to the physician, midwife, or other person in attendance, who shall certify the fetal death and supply any pertinent additional medical data;

(4) notify the local registrar if the death or fetal death occurred without attendance or if the physician last in attendance failed to sign the death certificate;

(5) file the death or fetal death certificate with the local registrar within three (3) days after the occurrence.

History: En. Sec. 65, Ch. 197, L. 1967.

69-4426. Death without medical attendance—certificate—investigation. If the death or fetal death occurred without medical attendance or the physician last in attendance failed to sign the death certificate, the local registrar may complete the certificate on the basis of information received from persons having knowledge of the facts. If it appears the death or fetal death result from other than natural causes, the local registrar shall notify the coroner for investigation and certification.

History: En. Sec. 66, Ch. 197, L. 1967.

69-4427. Delay in determining cause of death—permit for disposition of body. If the cause of death or fetal death cannot be determined within three (3) days after the occurrence, the attending physician or coroner shall give the local registrar written notice of the reason for delay so that a permit may be issued for disposition of the body.

History: En. Sec. 67, Ch. 197, L. 1967.

69-4428. Dead body—disposition or removal—permit required. No dead body shall be disposed of or removed from a registration district until a permit for disposition or removal has been issued by the local registrar. No permit shall be issued until a death certificate, fetal death certificate, or notice of delay as required in section 67 [69-4427] of this act has been filed with the local registrar.

History: En. Sec. 68, Ch. 197, L. 1967.

69-4429. Body brought into state for burial or other disposition—record of permit. If a body is brought into the state for burial or other disposition accompanied by a permit, the local registrar shall endorse the permit and keep a record of it.

History: En. Sec. 69, Ch. 197, L. 1967.

69-4430. Institutions caring for persons—reports as to inmates or patients. The person in charge of any institution or facility for the care of persons shall record and report all data required by this chapter relating to inmates or patients of the institution or facility.

History: En. Sec. 70, Ch. 197, L. 1967.

69-4431. Local registrars—fees. The state board may specify by regulation a fee to be paid each local registrar for each complete birth, death or fetal death certificate forwarded by the local registrar to the state registrar, or a monthly report stating the local registrar did not file certificates. The state registrar shall annually certify to the county treasurer the number of births, fetal deaths, and deaths, or monthly reports received from his county with the names of the local registrars and the amount due each. The treasurer shall pay each local registrar out of the county general fund.

History: En. Sec. 71, Ch. 197, L. 1967.

69-4432. Marriage certificates—reports as to filing—recording fee. Before the sixteenth day of each month, each clerk of a district court shall report marriage certificates filed with him during the preceding calendar month to the state registrar. Reports shall be on forms and contain information prescribed by the state registrar. The applicant for a marriage license shall pay a recording fee of twenty-five cents ($.25) to the officer authorized to issue the marriage license.

History: En. Sec. 72, Ch. 197, L. 1967.

69-4433. Registration of divorces, annulments and adoptions—certificates by clerks of courts. Before the sixteenth day of each month, the clerk of court shall prepare and forward to the state registrar a certificate for each decree of divorce, adoption, annulment of marriage, or annulment of adoption that became final during the preceding calendar month. Certificates shall be on forms prescribed by the state registrar.

History: En. Sec. 73, Ch. 197, L. 1967.

69-4434. Decree of divorce or annulment of marriage—report by clerk of court—information supplied by parties to the action or their attorneys. (1) At the same time a decree of divorce or annulment of marriage is filed, the clerk of court shall prepare a report to the state registrar on the form prescribed by the state registrar. Parties to the action or their attorneys shall supply the clerk with necessary information.

(2) The report shall include:

(a) name, age, birthplace, residence, race or color, and occupation of each party;

(b) number, date, and place of any previous marriage of either party;

(c) number of children under eighteen (18) years of age in custody of either party and residing with him;

(d) grounds for the action;

(e) the number of the cause of action;

(f) the county and judicial district where the action is filed;

(g) the date of judgment and the party which was granted it.

History: En. Sec. 74, Ch. 197, L. 1967.

69-4435. Duty to furnish information. Any person having knowledge of the fact shall furnish information he possesses about a birth, death, fetal death, marriage or divorce upon demand of the state registrar.

History: En. Sec. 75, Ch. 197, L. 1967.

69-4436. False statements or information contained in or mutilation of reports, records, or certificates relating to vital statistics—penalty. A person shall be fined not more than one thousand dollars ($1,000), imprisoned not more than one (1) year, or both, if:

(1) he willfully and knowingly makes any false statement in a report, record, or certificate required to be filed by law, or in an application for an amendment thereof, or willfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record, or certificate, or amendment;

(2) without lawful authority and with the intent to deceive, he makes, alters, amends, or mutilates any report, record, or certificate required to be filed under law or a certified copy of the report, record, or certificate;

(3) he willfully and knowingly uses or attempts to use, or furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy made, altered, amended, or mutilated;

(4) with the intention to deceive, he willfully uses or attempts to use any birth certificate or certified copy of a birth record knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person;

(5) he willfully and knowingly furnishes a birth certificate or certified copy of a birth record with the intention that it be used by a person other than the person to whom the birth record relates.

History: En. Sec. 76, Ch. 197, L. 1967.

69-4437. Handling and disposing of dead body without permit—refusal to give information—neglect or refusal to perform duties imposed by vital statistics law—penalty. A person shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100), imprisoned for not more than thirty (30) days, or both, if:

(1) he knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided by law;

(2) he refuses to provide information required by law;

(3) he willfully neglects or violates any of the provisions of law or refuses to perform any of the duties imposed upon him by law.

History: En. Sec. 77, Ch. 197, L. 1967.

CHAPTER 45—LOCAL BOARDS OF HEALTH

Section 69-4501. Definitions.
69-4502. General supervision by state department of health.
69-4503. Federal funds—acceptance—allocation.
69-4504. County boards of health—composition.
69-4505. City boards of health—first and second class cities—appointment of members.
69-4506. City-county boards of health—appointment of members.
69-4507. District boards of health—appointment of members.

69-4508. Financing of local boards of health—appropriations—tax levies.
69-4509. Functions, powers and duties of local boards of health.
69-4510. Local health officers—powers and duties.
69-4511. Local health officers—appointment.
69-4512. Visiting nurses.
69-4513. Health officers—assistance of peace officers in enforcing law.
69-4514. Cases of communicable disease—reports by practitioners of the healing arts.
69-4515. Smallpox vaccination.
69-4516. Diseased prisoners—removal from jail to hospital by local health officer.
69-4517. Obstructing local health officer in the performance of his duties unlawful.
69-4518. Dead animals—unlawful disposition.
69-4519. Penalty.

69-4501. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Local board" means a county, city, city-county, or district board of health.

(2) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(3) "Physician" means a physician legally authorized to practice medicine in this state.

History: En. Sec. 78, Ch. 197, L. 1967.

69-4502. General supervision by state department of health. With approval of the state board of health, the state department of health has general supervision over local boards.

History: En. Sec. 79, Ch. 197, L. 1967.

69-4503. Federal funds—acceptance—allocation. With approval of the state board, the executive officer of the state department of health may accept funds for public health from an agency of the federal government, or from any other agency or person, and allocate funds to local boards.

History: En. Sec. 80, Ch. 197, L. 1967.

69-4504. County boards of health—composition. There is a county board of health in each county consisting of:

(1) the county commissioners; or

(2) three (3) persons who are appointed by the county commissioners and serve at their pleasure.

History: En. Sec. 81, Ch. 197, L. 1967.

69-4505. City boards of health—first and second class cities—appointment of members. There is a city board of health in each first and second class city consisting of three (3) persons who are appointed by the governing body of the city and serve at their pleasure.

History: En. Sec. 82, Ch. 197, L. 1967.

69-4506. City-county boards of health—appointment of members. By mutual agreement between the county commissioners and the governing body of the city, the county and a first or second class city, or cities, may form a city-county board of health. A city-county board of health consists of:

(1) one (1) person appointed by the county commissioners who serves at their pleasure;

(2) one (1) person appointed by the governing body of each city that participates in the city-county board who serves at the pleasure of the appointing governing body;

(3) additional members appointed by the county commissioners and governing body, or bodies, of the city or cities participating in the city-county board as mutually agreed upon, who serve at the pleasure of the appointing commissioners or governing body.

History: En. Sec. 83, Ch. 197, L. 1967.

69-4507. District boards of health—appointment of members. By mutual agreement, two (2) or more adjacent counties may unite to create a district board of health. First and second class cities located in those counties may elect to be included in the district. A district board of health consists of:

(1) one (1) person appointed by the county commissioners of each county in the district who serves at the pleasure of the appointing commissioners;

(2) one (1) person appointed by the governing body of each city that elects to be included in the district, who serves at the pleasure of the appointing governing body;

(3) additional members appointed by the county commissioners of each county that participates in the district board as mutually agreed upon, who serve at the pleasure of the appointing commissioners.

History: En. Sec. 84, Ch. 197, L. 1967.

69-4508. Financing of local boards of health—appropriations—tax levies. (1) Local boards are financed by general fund appropriations, state and federal funds available, and contributions from school boards and other official and nonofficial agencies.

(2) Appropriations are made as follows:

(a) County boards are financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under chapter 19, Title 16, R. C. M. 1947.

(b) City boards are financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under chapter 14, Title 11, R. C. M. 1947.

(c) If a city-county board is created, the county commissioners and governing body of the city, or cities, shall mutually agree upon the division of expenses. The county part of total expenses is financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under chapter 19, Title 16, R. C. M. 1947. The city, or cities, part of total costs is financed by an appropriation from the general fund of the city, or cities, participating in the city-county board after approval of a budget in the way provided for other city offices and departments under chapter

14, Title 11, R. C. M. 1947. All moneys shall be deposited with the county treasurer who shall disburse them as county funds.

(d) District boards are financed by appropriations from the general funds of the counties in the district in proportion to the population in each county. First and second class cities which elect to be included in the district contribute to the county in which they are located in the way provided for city-county boards under subsection (2) (c) of this section. All funds shall be deposited with the county treasurer of one (1) of the counties as agreed upon by the commissioners of the counties in the district. The county treasurer shall disburse the funds as county funds.

(3) School boards and other official and nonofficial agencies may contribute funds to a local board.

(4) If the general fund of a city or county is not sufficient to meet the approved budget, a levy of not more than one (1) mill may be made on the taxable valuation of all property in the city or county in addition to all other levies authorized by law.

History: En. Sec. 85, Ch. 197, L. 1967.

69-4509. Functions, powers and duties of local boards of health. (1) Local boards shall:

(a) appoint a local health officer who is a physician and fix his salary;

(b) elect a chairman and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth which cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions.

(2) Local boards may:

(a) quarantine persons who have communicable diseases;

(b) require isolation of persons or things which are infected with communicable diseases;

(c) furnish treatment for persons who have communicable diseases;

(d) prohibit the use of places which are infected with communicable diseases;

(e) require and provide means for disinfecting places which are infected with communicable diseases;

(f) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(g) contract with another local board for all, or a part of, local health services;

(h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting public health;

(j) adopt rules, which do not conflict with rules adopted by the state board:

(i) for the control of communicable diseases,

(ii) for the removal of filth which might cause disease or adversely affect public health,

(iii) on sanitation in public buildings which affects public health,

(iv) for heating, ventilation, water supply and waste disposal in public accommodations which might endanger human lives.

History: En. Sec. 86, Ch. 197, L. 1967.

69-4510. Local health officers—powers and duties. (1) Local health officers, or their authorized representatives, shall:

(a) make inspections for sanitary conditions;

(b) as directed by the local board, issue written orders for the destruction and removal of all filth which might cause disease;

(c) with written approval of the executive officer, order buildings or facilities where people congregate closed during epidemics;

(d) on forms provided by the department, report communicable diseases to the executive officer each week;

(e) before the first day of January, April, July and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district together with a detailed account of his activities on forms, and containing information, required by the department;

(f) before the tenth day after the report is given to the local board, send a copy of the report required by subsection (1) (e) of this section to the department;

(g) as prescribed by rules adopted by the state board, establish and maintain quarantines;

(h) as prescribed by rules adopted by the state board, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;

(i) notify the state health department of his appointment and any changes in membership of the local board;

(j) file a complaint with the appropriate court if provisions of this chapter or rules adopted by the local or state board under the provisions of this chapter are violated.

(2) With approval of the executive officer, local health officers may forbid persons to assemble in any place if the assembly endangers public health.

(3) Local health officers may be placed in charge of communicable disease hospitals, but local health officers are not required to act as physician to the indigent.

History: En. Sec. 87, Ch. 197, L. 1967.

69-4511. Local health officers—appointment. If the county commissioners, or governing body of a first or second class city, do not appoint a health officer, the state board may appoint a health officer thirty (30) days after notification in writing has been given to the county commissioners or governing body of the city. A health officer appointed by the

state board has the same authority as a health officer appointed by a local board.

History: En. Sec. 88, Ch. 197, L. 1967.

69-4512. Visiting nurses. (1) A local board may employ a qualified nurse for nursing services to persons under a physician's care who are confined to their homes. Before nursing services are provided, a physician must:

(a) determine that the person needs the services of a visiting nurse;

(b) direct the nurse to visit the person;

(c) specify the type and duration of services to be performed by the nurse.

(2) Persons shall pay for the services at rates set by the local board. Local boards, on behalf of persons receiving services, may accept payment from persons or public agencies either directly from, or by contract with, the person or agency. All payments received shall be deposited in a special county or city fund and used to defray expenses of providing the service.

History: En. Sec. 89, Ch. 197, L. 1967.

69-4513. Health officers—assistance of peace officers in enforcing law. A state or local health officer may request a sheriff, constable, or other public officer to assist him in carrying out the provisions of this chapter. If the officer does not render the service, he is guilty of a misdemeanor and may be removed from office.

History: En. Sec. 90, Ch. 197, L. 1967.

69-4514. Cases of communicable disease—reports by practitioners of the healing arts. If a physician or other practitioner of the healing arts examines or treats a person whom he believes has a communicable disease, or a disease declared reportable by the department, he shall immediately report the case to the local health officer. The report shall be in the form, and contain information, prescribed by the department.

History: En. Sec. 91, Ch. 197, L. 1967.

69-4515. Smallpox vaccination. If there is a reasonable belief that smallpox exists or may exist, the department may require all persons frequenting any schoolhouse within the infected or threatened district to be vaccinated, or to present evidence of successful vaccination with cowpox. Unless a person presents evidence of vaccination, it is unlawful for him to enter any schoolhouse in the district.

History: En. Sec. 92, Ch. 197, L. 1967.

69-4516. Diseased prisoners—removal from jail to hospital by local health officer. (1) On written order of a local health officer, a diseased prisoner who is held in a jail and who is considered dangerous to the health of other prisoners, may be removed to a hospital or other place of safety. When the prisoner recovers from the disease, he shall be returned to the jail. If the prisoner was committed to jail by order of court, the order

for removal and treatment shall be signed by the local health officer and filed with the court.

(2) A prisoner removed to a hospital or clinic for treatment shall not be considered to have committed an escape.

History: En. Sec. 93, Ch. 197, L. 1967.

69-4517. Obstructing local health officer in the performance of his duties unlawful. It is unlawful to:

(1) hinder a local health officer in the performance of his duties under this chapter; or

(2) remove or deface any placard or notice posted by the local health officer; or

(3) violate a quarantine regulation.

History: En. Sec. 94, Ch. 197, L. 1967.

69-4518. Dead animals—unlawful disposition. It is unlawful to:

(1) place all or any part of a dead animal in any lake, river, creek, pond, reservoir, road, street, alley, lot, or field; or

(2) place all or any part of a dead animal within one mile of the residence of any person unless the dead animal or part of a dead animal is burned or buried at least two (2) feet under ground; or

(3) being the owner, permit all or any part of a dead animal to remain in the places specified in subsections (1) and (2) of this section except as provided in subsection (2) of this section;

(4) every twenty-four (24) hours that a dead animal or part of a dead animal remains in the places specified in subsections (1) and (2) of this section except as provided in subsection (2) of this act is a separate violation.

History: En. Sec. 95, Ch. 197, L. 1967.

69-4519. Penalty. (1) If a person refuses or neglects to comply with a written order of a state or local health officer within a reasonable time specified in the order, the state or local health officer may cause the order to be complied with and initiate an action to recover any expenses incurred from the person who refused or neglected to comply with the order. The action to recover expenses shall be brought in the name of the city or county.

(2) A person who does not comply with rules adopted by a local board is guilty of a misdemeanor. On conviction, he shall be fined not less than ten dollars ($10) nor more than fifty dollars ($50).

(3) Except as provided in subsections (1) and (2) of this section, a person who violates the provisions of this chapter, or rules adopted by the state board under the provisions of this chapter, is guilty of a misdemeanor. On conviction, he shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500), imprisoned for not more than ninety (90) days, or both.

History: En. Sec. 96, Ch. 197, L. 1967.

CHAPTER 46—VENEREAL DISEASE

Section 69-4601. Venereal diseases defined—dangerous to public health—exposing another to infection unlawful.
69-4602. Education campaigns by state department of health—co-operation with federal agencies—use of federal funds.
69-4603. Acceptance and disbursement of federal funds for control of venereal disease.
69-4604. Duty of physician to report cases of venereal disease.
69-4605. Examination and treatment of suspects—isolation or quarantine.
69-4606. Examination and treatment of prisoners.
69-4607. Duty of physician or other person to notify local health officer of suspected spread of infection.
69-4608. Prescribing of drugs or medicines for venereal disease limited to physicians.
69-4609. Certificates of freedom from disease.
69-4610. Information concerning infected persons—release.
69-4611. Serological test for syphilis.
69-4612. Blood samples from pregnant women to be tested for syphilis.
69-4613. Positive laboratory tests to be reported to state board of health.
69-4614. Report of birth to state whether blood test was made.
69-4615. Use of information derived from positive tests.
69-4616. Rules of state board of health—binding effect.
69-4617. Penalty for violations of chapter, regulations or orders.

69-4601. Venereal diseases defined—dangerous to public health—exposing another to infection unlawful. Syphilis, gonorrhea, chancroid, lympho-granuloma, venereum, and granuloma inguinale are venereal diseases. Venereal diseases are contagious, infectious, communicable, and dangerous to public health. A person infected with a venereal disease shall not knowingly expose another person to infection.

History: En. Sec. 97, Ch. 197, L. 1967.

69-4602. Education campaigns by state department of health—co-operation with federal agencies—use of federal funds. Under policy guidance of the state board of health, the state department of health shall undertake to prevent, control and prescribe treatments for venereal diseases and may conduct education campaigns for this purpose. The department shall co-operate with federal agencies and may expend federal funds made available to the state for the prevention, control and treatment of venereal diseases.

History: En. Sec. 98, Ch. 197, L. 1967.

69-4603. Acceptance and disbursement of federal funds for control of venereal disease. With approval of the state board, the executive officer of the state department of health is authorized to accept federal funds available for the prevention, control and treatment of venereal diseases, deposit funds in the state treasury, and disburse the funds.

History: En. Sec. 99, Ch. 197, L. 1967.

69-4604. Duty of physician to report cases of venereal disease. A physician who diagnoses or treats a venereal disease shall make a record and report the case to the department in the way and on forms provided by the department.

History: En. Sec. 100, Ch. 197, L. 1967.

69-4605. Examination and treatment of suspects—isolation or quarantine. (1) If found necessary or desirable to protect public health,

state and local health officers or their authorized deputies or agents shall:

(a) examine, or have examined, persons reasonably suspected of being infected with venereal disease;

(b) require persons infected to report for treatment to a reputable physician and continue treatment, which may be at public expense, until cured;

(c) isolate or quarantine persons who refuse examination or treatment;

(d) investigate sources of infection of venereal disease.

(2) No one but the state or local health officer may terminate the isolation or quarantine. Examinations may be made repeatedly as deemed advisable or desirable.

History: En. Sec. 101, Ch. 197, L. 1967.

69-4606. Examination and treatment of prisoners. Any person confined or imprisoned in any state, county, or municipal prison within the state may be examined for venereal disease. If infected, the person shall be treated by health authorities.

History: En. Sec. 102, Ch. 197, L. 1967.

69-4607. Duty of physician or other person to notify local health officer of suspected spread of infection. If a physician or other person knows or has reason to suspect that a person who has venereal disease is conducting himself in a way which might expose another to infection, he shall immediately notify the local health officer of the name and address of the diseased person and the essential facts in the case.

History: En. Sec. 103, Ch. 197, L. 1967.

69-4608. Prescribing of drugs or medicines for venereal disease limited to physicians. It is unlawful to prescribe, sell or recommend any drugs, medicines, or other substances for the cure or alleviation of venereal disease except upon prescription signed by a physician legally authorized to practice medicine in this state.

History: En. Sec. 104, Ch. 197, L. 1967.

69-4609. Certificates of freedom from disease. No person shall issue a certificate of freedom from venereal disease. However, a physician or health officer may issue a statement of freedom from diseases in an infectious state only if it is written in such form or given under safeguards that will prevent its use in solicitation for sexual intercourse. These statements shall not be used for solicitation for immoral purposes.

History: En. Sec. 105, Ch. 197, L. 1967.

69-4610. Information concerning infected persons—release. Information concerning persons infected or reasonably suspected to be infected with venereal disease may only be released to:

(1) personnel of the state department of health; or

(2) a physician who has written consent of the person whose record is requested.

History: En. Sec. 106, Ch. 197, L. 1967.

69-4611. Serological test for syphilis. The department shall approve a standard serological test for syphilis. It shall also approve laboratories which may make such tests. On request the department shall make laboratory tests required by this chapter without charge. The department shall destroy the results of a test if an erroneous report is made.

History: En. Sec. 107, Ch. 197, L. 1967.

69-4612. Blood samples from pregnant women to be tested for syphilis. Blood samples shall be taken from pregnant women and submitted to an approved laboratory for a standard serological test for syphilis as follows:

(1) any physician or other person authorized by law to practice obstetrics who attends a pregnant woman shall at the first professional visit take the blood sample and submit it to the laboratory.

(2) a person permitted to attend pregnant women but not permitted to take blood samples shall have the sample taken by a person permitted to take blood samples and submitted to a laboratory. If a pregnant woman refuses to give a blood sample, the person in attendance is not guilty of violating provisions of this section.

History: En. Sec. 108, Ch. 197, L. 1967.

69-4613. Positive laboratory tests to be reported to state board of health. Immediately after a positive laboratory test for venereal diseases is made, it shall be reported to the department by the person responsible for performing the tests. The department shall prescribe the form and way of reporting.

History: En. Sec. 109, Ch. 197, L. 1967.

69-4614 Report of birth to state whether blood test was made. A birth or fetal death certificate shall state whether a blood test for syphilis has been made on a specimen of blood taken from the mother. However, no birth or fetal death certificate may show the result of the test. The certificate shall state the approximate date when the specimen was taken. If no test was made, the reason shall be stated.

History: En. Sec. 110, Ch. 197, L. 1967.

69-4615. Use of information derived from positive tests. The department may use information derived from reports of positive tests for venereal diseases for follow-up procedures required by law or deemed necessary by the department for the protection of public health.

History: En. Sec. 111, Ch. 197, L. 1967.

69-4616. Rules of state board of health—binding effect. Rules adopted by the state board for carrying out the provisions of this chapter are binding on all persons and have the effect of law.

History: En. Sec. 112, Ch. 197, L. 1967.

69-4617. Penalty for violations of chapter, regulations or orders. A person who violates provisions of this chapter or rules adopted by the

state board concerning venereal disease, or who fails or refuses to obey any lawful order issued by a state or local health officer is guilty of a misdemeanor.

History: En. Sec. 113, Ch. 197, L. 1967.

CHAPTER 47—SHODDY CONTROL

Section 69-4701. "Mattress" defined.
69-4702. Label required.
69-4703. Prohibited acts—use of unfit material—use of secondhand material without sterilization—use of misleading terms.
69-4704. Rules and standards for mattress filling—adoption by state board of health.
69-4705. Inspections by health authorities.
69-4706. Condemnation of mattresses unlawfully made.
69-4707. Separate offenses.

69-4701. "Mattress" defined. As used in this chapter, unless the context clearly indicates otherwise, "mattress" means any quilted pad, comforter, mattress, mattress pad, hammock pad, bunk quilt, settee, couch, daybed, davenport, overstuffed chair, cushion or pillow filled with any soft material capable of use for sleeping or reclining purposes.

History: En. Sec. 114, Ch. 197, L. 1967.

69-4702. Label required. A person shall not manufacture or renovate for sale, consignment or rental a mattress unless it bears a label not smaller than six (6) square inches securely attached to the covering which states the name and address of the manufacturer or vendor, and type and per cent of various materials used in filling. If the mattress contains secondhand material, or has been renovated or remade, the label shall contain the words "secondhand material." The labels shall be in the form, and contain information, as prescribed by the state board of health.

History: En. Sec. 115, Ch. 197, L. 1967.

69-4703. Prohibited acts—use of unfit material—use of secondhand material without sterilization—use of misleading terms. A person shall not:

(1) manufacture or renovate for sale, consignment or rental a mattress containing material designated as unfit for filling by rules adopted by the state board;

(2) manufacture or renovate for sale, consignment or rental a mattress which contains secondhand materials or materials designated shoddy by the state board unless the mattress has been fumigated or sterilized by a process approved by the state board;

(3) use in a description for any mattress a term or designation that is likely to mislead;

(4) remove, alter, or deface any label required by section 115 [69-4702] of this act.

History: En. Sec. 116, Ch. 197, L. 1967.

69-4704. Rules and standards for mattress filling—adoption by state board of health. The state board may adopt rules and standards for mattress fillings to protect public health.

History: En. Sec. 117, Ch. 197, L. 1967.

69-4705. Inspections by health authorities. Officers and employees of the state department of health, local health officials, or officials discharging similar duties may enter establishments where mattresses are manufactured, renovated or sold and examine the premises or records to determine whether statutes, or rules and standards adopted by the state board are being violated.

History: En. Sec. 118, Ch. 197, L. 1967.

69-4706. Condemnation of mattresses unlawfully made. The department may condemn and seize mattresses found in violation of this chapter or rules or standards adopted by the state board. Mattresses seized shall be inspected by the nearest police judge or justice of the peace together with any information obtained. The judge or justice shall dispose of the mattresses or destroy them in the way which will best satisfy the requirements of law.

History: En. Sec. 119, Ch. 197, L. 1967.

69-4707. Separate offenses. The unit for a separate and distinct offense in violation of this chapter is each mattress made, remade, renovated, sold, offered for sale, delivered, consigned, rented, or possessed with intent to sell, deliver, consign, or rent.

History: En. Sec. 120, Ch. 197, L. 1967.

CHAPTER 48—WATER POLLUTION

Section 69-4801. Public policy of the state.
69-4802. Definitions.
69-4803. Classification of waters for industrial use.
69-4804. Chapter inapplicable to drainage or seepage from artificial bodies of water privately owned—exception.
69-4805. Administration of chapter—responsibility of state board of health.
69-4806. Pollution unlawful—permits.
69-4807. Permits, issuance—plans and specifications required—revocation of permit for violation.
69-4808. Duties of the state board of health.
69-4809. Powers and duties of state department of health.
69-4810. State water pollution control council—creation—members, appointment and term of office.
69-4811. State water pollution control council—vacancy in office, filling—compensation of members.
69-4812. State water pollution control council—officers—meetings—quorum—designating of deputy by member.
69-4813. Powers and duties of the council.
69-4814. Hearings by council—notice.
69-4815. Rehearing of order—procedure.
69-4816. Appeal from decision at a rehearing—procedure.
69-4817. Compliance with order required—extension of time.
69-4818. Injunction to enforce order.
69-4819. State officers to co-operate with state water pollution control council.

69-4801. Public policy of the state. (1) It is the public policy of this state to:

(a) conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses;

(b) provide a comprehensive program for the prevention, abatement, and control of water pollution.

(2) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving stream. However, municipal or industrial pollution upstream shall not be considered natural.

History: En. Sec. 121, Ch. 197, L. 1967.

69-4802. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings including discharge from human beings or animals together with ground water infiltration and surface water present.

(2) "Industrial waste" means any waste substance from the process of business or industry, or from the development of any natural resource together with any sewage that may be present;

(3) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, tar, chemicals, and all other substances that may pollute state waters;

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes or other wastes creating a hazard to human health;

(5) "Pollution" means the alteration of any of the properties of state waters which is detrimental to their most beneficial use;

(6) "Sewerage system" means any device for collecting or conducting sewage, industrial wastes or other wastes to an ultimate disposal point;

(7) "Treatment works" means any works installed for treating or holding sewage, industrial wastes or other wastes;

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and include sewerage systems and treatment works;

(9) "State waters" means any body of water, irrigation system, or drainage system either surface or underground;

(10) "Person" means the state, any political subdivision of the state, institution, firm, corporation, partnership, or individual or other entity;

(11) "Council" means the state water pollution control council.

History: En. Sec. 122, Ch. 197, L. 1967.

69-4803. Classification of waters for industrial use. Waters shall be classified only for industrial use if primarily and continuously devoted to industrial waste use except for seasonable variations for a period of over thirty (30) years, and not used for human consumption in a single public supply system serving more than one hundred (100) persons.

History: En. Sec. 123, Ch. 197, L. 1967.

69-4804. Chapter inapplicable to drainage or seepage from artificial bodies of water privately owned—exception. This chapter does not apply

to drainage or seepage from artificial, privately owned bodies of water unless drainage reaches flowing waters in a condition which would pollute the flowing waters.

History: En. Sec. 124, Ch. 197, L. 1967.

69-4805. Administration of chapter—responsibility of state board of health. Under council supervision, the state board of health has responsibility for administration of the provisions of this chapter. The state board may use personnel of the state department of health as necessary to administer the provisions of this chapter.

History: En. Sec. 125, Ch. 197, L. 1967.

69-4806. Pollution unlawful—permits. It is unlawful to:

(1) cause pollution as defined in section 122(5) [69-4802(5)] of this act to any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters;

(2) carry on any of the following activities without a current permit from the department:

(a) operate a disposal system which discharges to the state waters;

(b) construct or modify a disposal system which discharges to the state waters;

(c) increase the volume or strength of sewage, industrial wastes, or other wastes in excess of the permissive discharges specified under any existing permit;

(d) construct or use any new outlet for the discharge of sewage, industrial wastes, or other wastes to the state waters.

History: En. Sec. 126, Ch. 197, L. 1967.

69-4807. Permits, issuance—plans and specifications required—revocation of permit for violation. The department may require plans and specifications to determine if a permit should be issued. If a violation of a permit causes damage to a water use, the department may immediately order revocation of the permit without a hearing, and so notify the violating person in writing, by registered mail, return receipt requested, the revocation to be effective immediately upon receipt of such notice by such person.

History: En. Sec. 127, Ch. 197, L. 1967.

69-4808. Duties of the state board of health. (1) The state board shall advise, consult, and co-operate with other states, other state agencies and agencies of the federal government, affected groups, political subdivisions and industries, in the formulation of a comprehensive plan to control water pollution.

(2) The state board may:

(a) accept loans and grants from the federal government and from other sources to carry out the provisions of this chapter;

(b) modify council actions, but only as necessary to protect human health;

(c) through its authorized representatives, enter upon any private or public property at reasonable times to investigate conditions relating to pollution of state waters;

(d) issue, modify, or revoke orders for the abatement of pollution;

(e) issue, revoke, modify, or deny permits to persons for the collection and discharge of sewage and wastes under conditions prescribed by the state board and the council.

History: En. Sec. 128, Ch. 197, L. 1967.

69-4809. Powers and duties of the state department of health. The department shall:

(1) examine and approve or disapprove plans and other information needed to issue a permit;

(2) collect and furnish information relating to the prevention and control of water pollution;

(3) conduct necessary research and demonstrations concerning water pollution.

History: En. Sec. 129, Ch. 197, L. 1967.

69-4810. State water pollution control council—creation—members, appointment and term of office. There is a state water pollution control council whose members are:

(1) the executive officer of the state department of health;

(2) the state fish and game director;

(3) the director of the water conservation board;

(4) four (4) members appointed by the governor for terms of four (4) years as follows:

(a) a representative of industry concerned with the disposal of inorganic waste;

(b) a representative of industry concerned with the disposal of organic waste;

(c) a representative of agriculture;

(d) a representative of municipal government.

History: En. Sec. 130, Ch. 197, L. 1967.

69-4811. State water pollution control council—vacancy in office, filling—compensation of members. Terms of council members holding office on the effective date of this act shall not be affected. An appointment to an expired term shall be for four (4) years. An appointment to an unexpired term shall be for the remainder of the term. The four (4) appointed members shall receive twenty dollars ($20) per day plus actual and necessary expenses incurred in performing their duties. Expenses shall be paid by the department of health from funds appropriated and allocated to water pollution control.

History: En. Sec. 131, Ch. 197, L. 1967.

69-4812. State water pollution control council—officers—meetings—quorum—designating of deputy by member. (1) The council shall select a chairman from among its members. The executive officer shall designate a member of the public health engineering staff of the department to

act as secretary to the council. The secretary shall keep records of all actions taken by the council.

(2) It shall hold at least two (2) regular meetings each calendar year. Special meetings shall be held at the call of the chairman or upon written request of two (2) or more members. A majority of the members is a quorum.

(3) Each member may, by filing with the secretary, designate a deputy or alternate to perform his duties.

History: En. Sec. 132, Ch. 197, L. 1967.

69-4813. Powers and duties of the council. The council shall:

(1) establish and modify the classification of all waters in accordance with their present and future most beneficial uses;

(2) investigate means of eliminating materials which pollute state waters, and prevent pollution that is detrimental to the public health, recreation, agriculture, industry, animals, fish, or aquatic life;

(3) adopt rules to guide the state board and department in the administration of this act;

(4) adopt a comprehensive program for prevention of pollution of waters;

(5) recommend and encourage research and demonstrations relating to water pollution;

(6) direct the state board and department regarding any action necessary as a result of research or demonstrations;

(7) formulate standards of water purity and classification of water according to its most beneficial use giving consideration to the economics of waste treatment and prevention;

(8) hold any hearings necessary for the proper administration of this act, receive complaints, and make investigations;

(9) utilize staff services of the state board and department as they are able to furnish within budgetary limits;

(10) exercise all incidental powers necessary to carry out the provisions of this chapter.

History: En. Sec. 133, Ch. 197, L. 1967.

69-4814. Hearings by council—notice. Before streams are classified, or standards established or modified, the council shall hold a public hearing. Notice of the hearing specifying the waters concerned and the classification, standards or modification of them shall be published at least once a week for three (3) consecutive weeks in a newspaper of general circulation in the area affected. Notice shall also be mailed directly to persons the council believes may be affected by the classification or standard.

History: En. Sec. 134, Ch. 197, L. 1967.

69-4815. Rehearing of order—procedure. Any order of the council or state board is final thirty (30) days after notice is given to the person affected unless a rehearing is held before that time. The procedure for a rehearing is:

(1) the person affected by the order shall request a rehearing before the council;

(2) before the thirty-first (31st) day after receipt of the request, the council shall hold a rehearing;

(3) a record or summary of the rehearing shall be filed with the council together with its findings of fact;

(4) a representative of the council may administer oaths, examine witnesses, and issue notices of the rehearing including subpoenas requiring the testimony of witnesses and the production of evidence;

(5) witnesses shall receive the same fees and mileage as in other civil actions;

(6) in case of failure to obey a notice of hearing or subpoena, the district court where the hearing is held has jurisdiction upon request by the council to issue an order requiring a person to appear and testify or produce evidence, and failure to obey shall be punished as contempt of district court;

(7) the council shall affirm, modify, or reverse the order of the council or the board and notify the person of its action;

(8) the order of the council or the state board is final thirty (30) days after notice of final action is served on the person by registered mail unless the person has appealed to the district court.

History: En. Sec. 135, Ch. 197, L. 1967.

69-4816. Appeal from decision at a rehearing—procedure. The procedure for appealing the decision of the council at a rehearing is:

(1) within thirty (30) days after the receipt of a copy of the council's decision, a person shall serve notice of appeal on the council through its secretary;

(2) for good cause, the court may extend the time for notice of appeal but not to exceed an additional sixty (60) days;

(3) the notice of appeal shall refer to the action and specify the ground of appeal;

(4) the notice of appeal with proof of service shall be filed with the clerk of the court before the eleventh day after service of the notice;

(5) any person affected may become a party by intervention as in a civil action upon showing cause;

(6) the attorney general shall represent the council if requested, or the council may appoint special counsel for the proceedings;

(7) no bond or deposit for cost is required of the state or council upon the appeal to the district court or any subsequent appeal;

(8) the trial shall be de novo;

(9) the court shall determine whether or not the council regularly pursued its authority, or whether the orders of the board and the findings of the council are sustained; and whether the orders and findings are reasonable under the circumstances of the case;

(10) an appeal from the decision of the district court may be made to the supreme court in the same manner provided in other civil cases;

(11) upon final determination, the council shall enter an order in accordance with the determination made by the court.

History: En. Sec. 136, Ch. 197, L. 1967.

69-4817. Compliance with order required—extension of time. Before the thirty-first (31st) day after an order of the state board or the council becomes final, or a court judgment affirming or reversing the order is entered, the person upon whom the order was served shall initiate steps to comply with the order. On good cause shown, the state board or council may extend the period for compliance for a reasonable time.

History: En. Sec. 137, Ch. 197, L. 1967.

69-4818. Injunction to enforce order. The council shall bring action for an injunction against any person who fails to comply with a final order of the state board or council.

History: En. Sec. 138, Ch. 197, L. 1967.

69-4819. State officers to co-operate with state water pollution control council. The council may require the assistance, co-operation, services, and use of records of all state agencies. State officers and employees shall co-operate with the council in furthering the purposes of this chapter.

History: En. Sec. 139, Ch. 197, L. 1967.

CHAPTER 49—PUBLIC WATER SUPPLY

Section 69-4901. Public policy of the state.
69-4902. Definitions.
69-4903. Functions, powers and duties of state board of health.
69-4904. Powers and duties of the state department of health.
69-4905. Prohibited acts.
69-4906. Drilling well to furnish water for public consumption—records required.
69-4907. Appeal from rule or standard—injunction to require compliance.
69-4908. Penalty.

69-4901. Public policy of the state. It is the public policy of this state to protect, maintain, and improve the quality and potability of water for public water supplies and domestic uses.

History: En. Sec. 140, Ch. 197, L. 1967.

69-4902. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Contamination" means impairment of the quality of state waters by sewage or industrial wastes creating a hazard to human health;

(2) "Pollution" means the alteration of any of the properties of state waters which is detrimental to their most beneficial use;

(3) "Drainage" means rainfall, surface, and subsoil water;

(4) "Sewage" means domestic and manufacturing filth and waste;

(5) "State waters" means any body of water, irrigation system, or drainage system either surface or underground;

(6) "Public water supply" means any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves ten (10) or more families;

(7) "Person" means any person, firm, corporation, water or ice company, public institution, municipality or other political subdivision of the state.

History: En. Sec. 141, Ch. 197, L. 1967.

69-4903. Functions, powers and duties of state board of health. The state board of health shall:

(1) have general supervision over all state waters which are directly or indirectly being used by a person for a public water supply or domestic purposes, or source of ice;

(2) adopt rules, standards, and issue orders to prevent pollution and protect the quality of water and for the collection and analysis of samples of water used for drinking or domestic purposes giving legal notice of the adoption by publication or posting, and by filing a copy in the office of the clerk of the municipality or county where the rule or standard is effective.

History: En. Sec. 142, Ch. 197, L. 1967.

69-4904. Powers and duties of the state department of health. The state department of health shall:

(1) upon complaint to the department, or to the mayor or health officer of any municipality or to the managing board or officer of any public institution, make an investigation of any alleged pollution of a water supply, and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) have waters examined to determine their purity and the possibility that they may endanger public health;

(3) consult and advise authorities of cities and towns, and persons having or about to construct systems for water supply, drainage, waste water and sewage as to the most appropriate source of water supply and the best method of assuring its purity;

(4) advise persons as to the best method of purifying and disposing of their drainage, sewage, or waste water with reference to the existing and future needs of other persons and to prevent pollution;

(5) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage, or sewage may tend to pollute any waters as to the best method of preventing pollution;

(6) with approval of the state board, fix fees for services rendered in analyzing water and inspections to cover costs of the service and deposit receipts in the general fund;

(7) establish and maintain experiment stations and conduct experiments to study the best methods of purifying water, drainage, waste water, sewage, and industrial waste to prevent pollution, including investigation of methods used in other states;

(8) enter upon any premises at reasonable times to determine sources of pollution or danger to water supplies and whether rules and standards of the state board are being obeyed;

(9) notify the attorney general of violations of laws on pollution of state waters.

History: En. Sec. 143, Ch. 197, L. 1967.

69-4905. Prohibited acts. A person shall not:

(1) discharge polluting matter of any kind that will pollute the quality of state waters used by a person for domestic use or as a source of supply by a city, town, public institution, water or ice company;

(2) discharge human excrement, sewage, drainage, refuse, or polluting matter into any state waters or on the banks of any state waters or into any abandoned or operating water well unless the sewage, drainage, refuse, or polluting water is purified to render it harmless as prescribed by the state board;

(3) build or operate any railroad, logging road, logging camp, electric or manufacturing plant of any kind on any watershed of a public water supply system, unless:

(a) the water supply is protected from pollution by sanitary precautions prescribed by the state board; and

(b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;

(4) construct, alter, or extend any system of water supply, water distribution, sewer, drainage, waste water, or sewage disposal without first submitting necessary maps and plans and specifications to the department for their advice and approval.

History: En. Sec. 144, Ch. 197, L. 1967.

69-4906. Drilling well to furnish water for public consumption—records required. Every person drilling a water well to furnish water for public consumption shall keep a complete record of the depth, thickness and character of different strata, and other information prescribed by the board. Data shall be furnished to the department on forms prescribed by it. These data are available to the public at all reasonable times.

History: En. Sec. 145, Ch. 197, L. 1967.

69-4907. Appeal from rule or standard—injunction to require compliance. Any person aggrieved by a rule or standard of the state board may appeal to the district court. While the appeal is pending, the rule or standard of the state board is in force. The state board may request an injunction from the district court to require compliance with rules and standards.

History: En. Sec. 146, Ch. 197, L. 1967.

69-4908. Penalty. Violation of this chapter, or any rule or order of the state board or department under the provisions of this chapter, is punishable for each offense by a fine of not more than one thousand dollars ($1,000), imprisonment for not more than one (1) year, or both.

History: En. Sec. 147, Ch. 197, L. 1967.

CHAPTER 50—SUBDIVISIONS

Section 69-5001. Public policy of the state.
69-5002. "Subdivision" defined.
69-5003. Filing of map or plat subject to sanitary restrictions—submission to and approval by state department of health—removal or modification of restrictions.
69-5004. Filing or recording of noncomplying map or plat prohibited.
69-5005. Rules for administration and enforcement of chapter.

69-5001. Public policy of the state. It is the public policy of this state to extend present laws controlling water supply and sewage disposal to include individual wells affected by adjoining sewage disposal and individual sewage systems.

History: En. Sec. 148, Ch. 197, L. 1967.

69-5002. "Subdivision" defined. As used in this chapter, unless the context clearly indicates otherwise, "subdivision" means any tract of land which is divided into two (2) or more parcels, any parcel of which is less than five (5) acres in size along an existing or proposed street, highway, easement, or right of way for sale, rent, or lease as residential, industrial, or commercial building lots described by reference to a map or survey of the property.

History: En. Sec. 149, Ch. 197, L. 1967.

69-5003. Filing of map or plat subject to sanitary restrictions—submission to and approval by state department of health—removal or modification of restrictions. Any subdivision map or plat filed with the county clerk and recorder shall be subject to a sanitary restriction which must be recorded on, or attached to, the map or plat by the county clerk and recorder. No building or shelter which necessitates supplying water or sewage or waste disposal facilities for persons shall be erected until the sanitary restriction has been removed or modified. Before any restriction can be removed or modified by the county clerk and recorder, the map or plat of the subdivision must be submitted to the state department of health for their approval. Conditional approval may be given by the department after construction of a part of the water and sewage system, but permanent buildings shall not be occupied until the restriction has been removed or modified. The county clerk and recorder shall remove the sanitary restriction upon notice from the department that:

(1) the department approves plans and specifications for the public water facility and sewage facilities; or

(2) the subdivision map or plat is approved by the department for a subdivision not providing public water or sewage systems.

History: En. Sec. 150, Ch. 197, L. 1967.

69-5004. Filing or recording of noncomplying map or plat prohibited. The county clerk and recorder shall not file or record any map or plat showing a subdivision unless it complies with the provisions of this chapter.

History: En. Sec. 151, Ch. 197, L. 1967.

69-5005. Rules for administration and enforcement of chapter. The state board shall make rules, including adoption of sanitary standards, necessary for administration and enforcement of this chapter. The rules and standards shall provide the basis for approving subdivision maps or plats for various types of water and sewage facilities, both public and private, and shall be related to size of lots, contour of land, porosity of soil, ground water level, type and construction of private water and sewage facilities, and other factors affecting public health.

History: En. Sec. 152, Ch. 197, L. 1967.

CHAPTER 51—CADAVERS

Section 69-5101. Procurement of cadavers by medical schools in the United States authorized.
69-5102. Procedure to procure cadavers.
69-5103. Limitations on right to perform autopsy or dissection.
69-5104. Qualifications to perform autopsies—written report of findings.
69-5105. Dissection of human body by licensed mortician.
69-5106. Unauthorized post-mortem examinations—penalty.

69-5101. Procurement of cadavers by medical schools in the United States authorized. Any medical school in the United States may procure unclaimed human bodies for use in teaching and demonstrations of anatomy.

History: En. Sec. 153, Ch. 197, L. 1967.

69-5102. Procedure to procure cadavers. The procedure to procure a human body for use in teaching and demonstrations of anatomy is:

(1) the medical school shall apply to the person or organization having custody of the unclaimed body asking that the body be delivered to the school for teaching and demonstration of anatomy;

(2) the medical school shall file a notarized statement with the state department of health showing that proper equipment is available for proper handling, security, and preservation of human bodies.

(3) the body shall be kept at the unit, institution, or hospital, for at least three (3) weeks after the date of death before it can be used;

(4) the medical school shall pay the costs of special preparation and transportation of the body;

(5) a burial permit shall accompany each body, and the medical school shall properly register the body and arrange for burial by a licensed mortician at the expense of the medical school;

(6) if there was no request by the deceased person that his body be buried immediately, the person or organization having custody may deliver an unclaimed body to the medical school applying. The medical school shall file a statement with the department stating that the body will be used only for teaching and demonstration of anatomy.

History: En. Sec. 154, Ch. 197, L. 1967.

69-5103. Limitations on right to perform autopsy or dissection. The right to perform an autopsy, or to dissect a human body, or make any post-

mortem examination involving dissection of any part of a body, is limited to cases where:

(1) specifically authorized by law;

(2) a coroner is authorized to hold an inquest and then only to the extent that the coroner may authorize dissection or autopsy;

(3) authorized by a written statement of the deceased, whether the statement is of a testamentary character or otherwise;

(4) authorized by the husband, wife, or next of kin responsible by law for burial to determine the cause of death and then only to the extent so authorized;

(5) the decedent died in a hospital operated by the United States Veterans Administration, Montana School for the Deaf and Blind, or an institution in the department of institutions leaving no surviving husband, wife, or next of kin responsible by law for burial, and the manager or superintendent of the hospital or institution where death occurred obtains authority on order of the district court to determine the cause of death and then only to the extent authorized by court order;

(6) the decedent died in the state, was a resident, but left no surviving husband, wife, or next of kin charged by law with the duty of burial and the attending physician obtains authority on order of the district court for the purpose of ascertaining the cause of death, and then only to the extent authorized by court order after it has been shown that the physician made diligent search for the next of kin responsible by law for burial.

History: En. Sec. 155, Ch. 197, L. 1967.

69-5104. Qualifications to perform autopsies—written report of findings. All autopsies of a human body shall be performed by a physician legally authorized to practice medicine in this state. Upon completion, the physician shall send a written report of his findings, including the cause of death, to the next of kin of the decedent, representative of the decedent's estate, or other person lawfully requesting the report.

History: En. Sec. 156, Ch. 197, L. 1967.

69-5105. Dissection of human body by licensed mortician. This act shall not restrict the right of a licensed mortician to dissect a human body for proper preparation of the body for burial, cremation, or other disposition provided by law.

History: En. Sec. 157, Ch. 197, L. 1967.

69-5106. Unauthorized post-mortem examinations—penalty. Unless authorized by law, any person who performs an autopsy, dissection, or other post-mortem examination or causes it to be made, is guilty of a misdemeanor. Upon conviction he shall be punished by a fine not exceeding five hundred dollars ($500).

History: En. Sec. 158, Ch. 197, L. 1967.

CHAPTER 52—HOSPITALS, HOSPITAL RELATED FACILITIES, AND LONG-TERM CARE FACILITIES

Section 69-5201. Definitions.
69-5202. Facilities operated by federal agencies exempt.
69-5203. License required—duration—transfer prohibited—display.
69-5204. License fees.
69-5205. Application for license—procedure.
69-5206. Issuance and renewal of licenses—inspection of facility and records—provisional license.
69-5207. Denial of application for long-term care facility.
69-5208. Revocation or refusal to renew long-term care facility.
69-5209. Denial, suspension or revocation of hospital or hospital related facility licenses—grounds.
69-5210. Denial, suspension or revocation of license—procedure.
69-5211. Review of decision of the state board of health.
69-5212. Alteration or addition to facility—approval of plans and specifications by the state board of health.
69-5213. Rules and standards for long-term care facilities—adoption and publication by the state board of health.
69-5214. Hospital and long-term care facility advisory council—members appointed by governor—functions.
69-5215. Hospital and long-term care facility advisory council—terms of office of members—meetings—compensation.
69-5216. Rules and standards for facilities licensed under this chapter.
69-5217. Discrimination among patients of physicians prohibited—license required of spiritual healing institutions.
69-5218. Information confidential.
69-5219. Records and reports required of licensees.
69-5220. Injunction.
69-5221. Penalties.

69-5201. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Hospital" means a place which for twenty-four (24) hours or more in each week:

(a) provides diagnosis, treatment, or care for two (2) or more non-related individuals who are suffering from illness, disease, injury, or deformity; or

(b) provides obstetrical, surgical, or other medical or nursing care for two (2) or more non-related individuals.

(c) The term includes public health centers and medical facilities.

(2) "Hospital related facility" means a facility which provides:

(a) diagnosis, treatment, or care of individuals suffering from mental illness or mental retardation; or

(b) care or treatment for more than one (1) woman within six (6) months who is pregnant or who has delivered not more than ten (10) days before. The woman may not be related by blood or marriage to the person who owns or manages the facility.

(3) "Long-term care facility" means a place operated for profit or not, which provides nursing, personal care, or maintenance to four (4) or more persons who are unable to properly care for themselves, or provides sheltered care to four (4) or more aged persons not related to the operator by blood or marriage. It includes:

(a) "Nursing homes" which are facilities furnishing skilled nursing care and related services;

(b) "Personal care homes" which are facilities providing personal care and services to residents not in need of skilled nursing care;

(c) "Boarding homes" which are facilities providing only maintenance and sheltered care;

(d) facilities providing combinations of services provided by nursing homes, personal care homes, and boarding homes.

(4) "Long-term care facility" does not include:

(a) a hospital, sanitarium, or other institution whose principal activity is the care and treatment of persons suffering from mental or nervous illness;

(b) hotels, motels, boarding houses, rooming houses, or similar accommodations.

(5) "Person" means any person, firm, partnership, association or corporation, or governmental unit;

(6) "Governmental unit" means the state, a state agency, any county, municipality, political subdivision of the state or an agency of any political subdivision;

(7) "Resident" means a person who is in a long-term care facility as a patient or for personal or sheltered care;

(8) "Facility" means a hospital, hospital related facility or long-term care facility.

History: En. Sec. 159, Ch. 197, L. 1967.

69-5202. Facilities operated by federal agencies exempt. This chapter does not apply to facilities operated by an agency of the federal government.

History: En. Sec. 160, Ch. 197, L. 1967.

69-5203. License required — duration — transfer prohibited — display. (1) No person may operate a facility unless licensed by the state department of health. Licenses shall be for one (1) year unless issued for a shorter period. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned or transferred.

(2) Upon discontinuance of the operation or of transfer of ownership of a facility, the license must be returned to the department.

(3) Licenses shall be displayed in a conspicuous place near where patients or residents are admitted.

History: En. Sec. 161, Ch. 197, L. 1967.

69-5204. License fees. The department shall collect a fee of twenty dollars ($20) for each license issued and deposit receipts in the state general fund.

History: En. Sec. 162, Ch. 197, L. 1967.

69-5205. Application for license—procedure. The procedure to apply for a license is:

(1) at least thirty (30) days prior to the opening of a facility and annually thereafter, application is made to the department accompanied by the license fee of twenty dollars ($20);

(2) the application shall contain:

(a) the name and address of the applicant if an individual; or the name and address of each member if a firm, partnership or association; or the name and address of each officer if a corporation;

(b) the location of the facility;

(c) the name of the person or persons who will manage or supervise the facility;

(d) the number and type of patients or residents for which care is provided;

(e) any information which the state board of health may require pertaining to the number, experience, and training of employees;

(f) information on ownership, contract or lease agreement, if operated by a person other than the owner.

History: En. Sec. 163, Ch. 197, L. 1967.

69-5206. Issuance and renewal of licenses—inspection of facility and records—provisional license. (1) On receipt of a new or renewal application, the department, or its authorized agent, shall inspect the facility. If minimum standards are met and the proposed staff is qualified, the department shall issue a license for one (1) year. If minimum standards are not met, the department may issue a provisional license for less than one (1) year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community.

(2) Licensed premises shall be open to inspection and access to all records shall be granted at all reasonable times.

History: En. Sec. 164, Ch. 197, L. 1967.

69-5207. Denial of application for long-term care facility. The department may deny an application for long-term care facility license if:

(1) it fails to meet minimum standards prescribed under section 171 [69-5213] of this act;

(2) the staff is insufficient in number or unqualified by lack of training or experience;

(3) the applicant or any person managing it has been convicted of a felony or otherwise shows evidence of character traits inimical to the health and safety of residents;

(4) it does not have the financial ability to operate in accordance with law, or rules, or standards adopted by the state board.

History: En. Sec. 165, Ch. 197, L. 1967.

69-5208. Revocation or refusal to renew long-term care facility. The department may revoke or refuse to renew a long-term care facility license if:

(1) there is cruelty or indifference affecting the welfare of the residents;

(2) there is misappropriation of the property or funds of a resident;

(3) there is conversion of the property of a resident without his consent;

(4) any provision of this chapter, or rules or standards adopted by the state board are violated;

(5) any reason enumerated in section 165 [69-5207] of this act exists.

History: En. Sec. 166, Ch. 197, L. 1967.

69-5209. Denial, suspension or revocation of hospital or hospital related facility licenses—grounds. The department may deny, suspend, or revoke a hospital or hospital related facility license if it finds there has been substantial failure to comply with the provisions of this chapter.

History: En. Sec. 167, Ch. 197, L. 1967.

69-5210. Denial, suspension or revocation of license—procedure. (1) If a license is denied, suspended, or revoked, the procedure is:

(a) notice is given by registered mail or personal service to the applicant or licensee stating the reason for the proposed action and specifying a date, not less than fifteen (15) days after mailing or service, for a hearing before the state board;

(b) witnesses may be subpoenaed by either party;

(c) in accordance with rules adopted by the state board, a hearing is held before the state board;

(d) a full and complete record shall be kept of all proceedings, but need not be transcribed unless the decision is appealed to the district court;

(e) on the basis of the hearing, or default of the applicant, the state board shall make findings of fact and conclusions of law;

(f) the applicant or licensee shall be notified by registered mail or personal service of the state board's decision;

(g) the decision of the state board is final thirty (30) days after it is mailed or served unless the applicant or licensee commences an action in the district court to appeal the decision.

(2) A copy of the transcript of any hearing may be obtained by any person on payment of the costs of preparing the copy.

History: En. Sec. 168, Ch. 197, L. 1967.

69-5211. Review of decision of the state board of health. If any applicant or licensee is aggrieved by the decision of the state board after the hearing provided in section 168 [69-5210] of this act, the procedure is:

(1) before the thirty-first (31st) day after mailing or service of the state board's decision, the applicant or licensee shall file a complaint in the district court where the facility is located or will be located;

(2) summons shall be issued, and proceedings shall be conducted as in the case of other civil actions;

(3) the state board shall file a certified copy of the record and decision from the hearing with the court upon filing its answer to the complaint;

(4) findings of fact by the state board shall be conclusive unless substantially contrary to the evidence, or unless in conflict with law;

(5) the court may remand the case to the state board for further evidence if good cause is shown;

(6) on rehearing the state board may affirm, reverse, or modify its decision;

(7) the court may affirm, reverse, or modify the rehearing decision of the state board;

(8) either party may appeal the final decision of the district court;

(9) pending final disposition of a matter appealed, the status quo of the applicant or licensee shall be preserved unless the court orders otherwise.

History: En. Sec. 169, Ch. 197, L. 1967.

69-5212. Alteration or addition to facility—approval of plans and specifications by the state board of health. The state board may adopt rules to require an applicant or licensee who contemplates alteration or addition to a facility to submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.

History: En. Sec. 170, Ch. 197, L. 1967.

69-5213. Rules and standards for long-term care facilities—adoption and publication by the state board of health. (1) The board shall adopt and publish rules and minimum standards for all long-term care facilities distinguishing between those for nursing care, personal care, sheltered care, and facilities providing combinations thereof.

(2) Standards shall relate to:

(a) location and construction of the facility including plumbing, heating, lighting, ventilation, and other conditions affecting the health, safety, or comfort of residents;

(b) number and qualifications of personnel;

(c) sanitary conditions including water supply, sewage disposal, food handling, laundries, and general hygiene;

(d) diet based on good nutritional practice, needs of residents, and recommendations of attending physicians;

(e) fixtures and equipment essential to the health and safety of residents;

(f) age and physical requirements for admission;

(g) records of residents' medical history, funds, property, and contract with the operator or manager;

(h) medical supervision and resident care including use of physical restraints;

(i) reporting of contagious diseases, epidemics, or food poisoning;

(j) administration including the storage and handling of medications, narcotics, barbiturates, and compressed gases;

(k) visiting hours and areas.

(3) All long-term care facilities of nonfire-resistant construction, of two (2) stories or more in height having ten (10) or more residents, must have an automatic sprinkler system approved by the state fire marshal. The fire marshal shall furnish the state board with certificates of compliance with fire protection rules and standards.

History: En. Sec. 171, Ch. 197, L. 1967.

Employment of Nurses

Chapter 250, Laws of 1967, enacted temporary provisions relating to employment practices in relation to nursing personnel.

Chapter 250 read:

"An act providing for the adoption of orderly procedures for establishing desirable employment practices for registered professional and licensed practical nurses employed in health care facilities; establishing procedures for establishing standards and procedures for employment relationships.

"Be it enacted by the legislative assembly of the state of Montana:

"Section 1. The purpose of this act is to encourage effective measures to assure uninterrupted continuation of sufficient competent nursing care of the ill and infirm in the state of Montana, and further to encourage the practice of mutually and peacefully agreeing upon the establishment and maintenance of desirable employment practices between nurse employees, professional and practical, and their health care facility employers, either public or private.

"Section 2. Definitions. As used in this act, unless the context clearly requires otherwise:

"(1) 'Appropriate unit' means a homogenous group of employees (as herein defined) of a health care facility, having similar duties and qualifications, determined pursuant to section 4 of this act.

"(2) 'Employee' means a registered professional or licensed practical nurse performing services for compensation for a health care facility, but does not include a member of a religious order assigned to a health care facility by the order as a part of her obligations to the order.

"(3) 'Health care facility' means a hospital or nursing home, or other agency or establishment, employing employees as defined in this act, whether operated publicly or privately, having as one of its principal purposes the preservation of health or the care of sick or infirm individuals or both.

"(4) 'Board' or 'board of health' means the state board of health.

"Section 3. It is an improper employment practice for a health care facility to do one or more of the following:

"(1) Interfere with or restrain or coerce employees in any manner in the exercise of their right of self organization;

"(2) Initiate, create, dominate, contribute to or interfere with the formation or administration of an employee organization that has collective bargaining as one of its principal functions;

"(3) Discriminate in regard to hire terms or conditions of employment when a purpose of such is to discourage membership in an employee organization that has collective bargaining as one of its principal functions;

"(4) Refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of its employees. For the purpose of this subsection, it is a requirement of bargaining in good faith that the parties be willing to reduce in writing, and have their representative sign, any agreement arrived at through negotiations and discussion;

"(5) Unilaterally exclude from work or prevent from working, or discharge any one or more employees, when the purpose of such action is, in whole or in part, to interfere with or coerce or intimidate an employee in the exercise of rights assured in this law.

"Section 4. (1) The composition of an appropriate unit in a health care facility, for purposes of this law, may be determined by mutual consent between such facility and the employees thereof.

"(2) In the event no such mutual consent is available, then either the facility, or representatives of employees may apply to the state board of health and said board, through a duly designated agent, shall make a determination of the composition of such an appropriate unit.

"(3) In determining such appropriate unit professional employees may not be included in the same unit with nonprofessional employees unless a majority of professional employees in a proposed unit desire such inclusion. Weight shall be accorded similarity of duties, licensure, and conditions of employment, among other relevant factors, in determining an appropriate unit.

"Section 5. An employee organization is considered to be the duly designated representative of all the employees in an appropriate unit for the purpose of section 3 of this act if it can show evidence that bargaining rights have been assigned to it by a majority of the employees in that unit.

"Section 6. (1) If the right of an employee organization to represent the employees in an appropriate unit is questioned by the authority in charge of the facility employing the employees, the employee organization may petition the board of health for a determination. The board of health, or his representative, shall investigate and determine the composition of an appropriate unit, if such determination has not previously been made under section 4 of this act, and shall determine the representative, if any, designated to represent the employees in the appropriate unit.

"(2) An employee organization found by the state board of health to be authorized by at least thirty per cent (30%) of the employees in an appropriate unit may apply for an election by secret ballot to determine its right to represent the employees in that unit. If more than one employee organization claims to represent employees in that unit, the state board of health may conduct an election by secret ballot to determine which is authorized to represent the unit. If an employee organization receives a majority of the valid votes cast at the election, it is considered to be authorized to represent all the employees in that unit for the purpose of section 3 of this act.

"(3) A determination under this section remains in effect for at least one (1) year.

"Section 7. The board of health, a health care facility, or an employee organization qualified to apply for an election under section 6 of this act may, in the name of its members, or in its name, institute proceedings to restrain the commission of any improper practice listed in section 3 of this act. The proceeding may be instituted in the district court for any county in which the health care facility does business. The court in such an action may grant mandatory or prohibitory relief.

"Section 8. This act shall be severable, and should any part or provision hereof be held to be unconstitutional such declaration will not invalidate the remaining provisions hereof.

"Section 9. This being an act to assist in the public health and safety, it shall be in full force and effect from July 1, 1967 to June 30, 1969."

69-5214. Hospital and long-term care facility advisory council—members appointed by governor—functions. (1) The governor shall appoint a hospital and long-term care facility advisory council to consult with the state board in administering this chapter and statutes relating to hospitals, medical and related facilities survey and construction contained in sections 180 through 192 [69-5301 through 69-5313] of this act.

(2) The council consists of:

(a) the executive officer of the department of health who is ex officio chairman;

(b) the state administrator of public welfare, ex officio;

(c) the director of the department of institutions, ex officio;

(d) representatives of nongovernmental organizations or groups, and public agencies, concerned with the operation and construction of hospitals and hospital related facilities;

(e) two (2) persons of recognized experience in the operation of long-term care facilities;

(f) representatives of consumers familiar with the need for services provided by hospitals, hospital related facilities, and long-term care facilities;

(g) additional members required for benefits under any federal law.

History: En. Sec. 172, Ch. 197, L. 1967.

69-5215. Hospital and long-term care facility advisory council—terms of office of members—meetings—compensation. (1) Members of the first council shall serve for one (1), two (2), or three (3) years as designated by the governor. The governor shall avoid expiration of the terms of more than one-third (⅓) of the initial appointive members' terms in any twelve (12) month period. After the initial appointments, appointed members serve for three (3) year terms. Appointments for unexpired terms shall be for the remainder of the term.

(2) The council meets at the call of the chairman, or at the request of four (4) of the appointed members.

(3) Members, except ex officio members, are reimbursed at the rate of ten dollars ($10) per day for actual expenses and eight cents (8¢) per mile for travel.

History: En. Sec. 173, Ch. 197, L. 1967.

69-5216. Rules and standards for facilities licensed under this chapter. With the advice of the hospital and long-term care facility advisory council, the state board shall adopt rules and standards for facilities licensed under this chapter. The department shall extend a reasonable time for compliance with rules after adoption by the state board.

History: En. Sec. 174, Ch. 197, L. 1967.

69-5217. Discrimination among patients of physicians prohibited—license required of spiritual healing institutions. (1) No person who operates a facility may discriminate among the patients of licensed physicians. The free and confidential professional relationship between licensed physician and patient shall continue and remain unaffected. Physicians shall continue to have direction over their patients.

(2) This chapter, and rules and standards adopted by the state board, may not authorize the supervision, regulation, or control of care or treatment of persons in any home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denomination. However, a license is required and all other minimum standards apply.

History: En. Sec. 175, Ch. 197, L. 1967.

69-5218. Information confidential. Information received by the department or board through reports, inspection, or provisions of this chapter may not be disclosed in a way which would identify individuals or facilities, except in a proceeding involving the question of licensure or as required by the federal government for certification or preparation of a state plan.

History: En. Sec. 176, Ch. 197, L. 1967.

69-5219. Records and reports required of licensees. Licensees shall keep records, and make reports, as required by the state board. Before February 1 of each year, every person licensed under this chapter shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the board.

History: En. Sec. 177, Ch. 197, L. 1967.

69-5220. Injunction. The state board or department, on advice of the attorney general, may maintain an action for injunction or other process against any person to restrain or prevent the establishment, conduct, management or operation of a facility which is endangering health and welfare.

History: En. Sec. 178, Ch. 197, L. 1967.

69-5221. Penalties. A person who violates provisions of this chapter is guilty of a misdemeanor. On conviction he shall be fined not more

than one hundred dollars ($100) for the first offense, and not more than three hundred dollars ($300) for each subsequent offense. Each day of a continuing violation after conviction is a separate offense.

History: En. Sec. 179, Ch. 197, L. 1967.

CHAPTER 53—HOSPITALS, MEDICAL AND RELATED FACILITY SURVEY AND CONSTRUCTION

Section 69-5301. Definitions.
69-5302. State department of health as principal state agency for hospital construction—contracts with federal government.
69-5303. Powers and duties of state department of health.
69-5304. Rules for administration of this chapter—adoption by state board of health.
69-5305. Submission of hospital construction plans to federal agencies—federal funds, use and disposition—inspection of projects—consultants' contracts.
69-5306. Publicity as to plans before they are submitted to a federal agency—public hearing.
69-5307. Minimum standards for maintenance and operation of hospitals, medical and related facilities.
69-5308. State plan.
69-5309. Applications for construction projects—who may file.
69-5310. Allowance of application, forwarding to federal agency—denial of application, opportunity for hearing.
69-5311. Federal funds—acceptance authorized—use and disposition.
69-5312. Consolidated applications by two or more counties.
69-5313. Discrimination prohibited in subsidized facilities.

69-5301. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Federal acts" are federal statutes for the construction of medical or related facilities.

(2) "Hospital" includes public health centers and general, pulmonary disease, tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities such as laboratories, out-patient departments, nurses' homes and training facilities, and central service facilities created in connection with hospitals, but does not include a hospital furnishing primarily domiciliary care.

(3) "Medical facility" means a diagnostic or diagnostic and treatment center, rehabilitation facility, facility for long-term care as defined by federal acts, and other medical facilities for which federal aid is or may be authorized.

(4) "Related facility" includes a facility devoted to the diagnosis, treatment, or care of individuals afflicted with mental illness or mental retardation.

(5) "Health center" means a publicly owned facility providing public health services including publicly owned laboratories, clinics, and administrative offices operated in connection with the facility.

(6) "Nonprofit hospital or nonprofit medical facility" means a hospital or medical facility owned or operated by one (1) or more nonprofit corporations or associations if no part of the net earnings inure to the benefit of any private shareholder or individual.

(7) "Council" means the hospital and long-term care facility advisory council created by section 172 [69-5214] of this act.

History: En. Sec. 180, Ch. 197, L. 1967.

69-5302. State department of health as principal state agency for hospital construction—contracts with federal government. The state department of health is the principal state agency for establishing and administering a statewide plan for construction, modernization, alteration, equipment, maintenance, or operation of any hospital, medical, or related facility for provision of care, treatment, diagnosis, rehabilitation, training, or related service. With approval of the state board of health, the executive officer of the state department of health may enter into contracts and agreements with agencies of the federal government to secure the benefit of federal programs to provide adequate medical and related facilities and services.

History: En. Sec. 181, Ch. 197, L. 1967.

69-5303. Powers and duties of state department of health. The department shall:

(1) inventory existing hospitals, medical and related facilities;

(2) survey the need for construction or alteration of hospitals;

(3) develop and administer a state plan for the construction and alteration of public and other nonprofit hospitals, medical and related facilities;

(4) if desirable, enter into agreements after approval by the state board for the utilization of facilities and services of other departments, agencies, and institutions, public or private;

(5) accept and deposit with the state treasurer and spend any grant, gift, or contribution made to meet costs of carrying out the purposes of this act.

History: En. Sec. 182, Ch. 197, L. 1967.

69-5304. Rules for administration of this chapter—adoption by state board of health. The state board shall adopt necessary rules for the administration of this chapter.

History: En. Sec. 183, Ch. 197, L. 1967.

69-5305. Submission of hospital construction plans to federal agencies—federal funds, use and disposition—inspection of projects—consultants' contracts. With approval of the state board, the department shall:

(1) prepare and review a construction program in accordance with federal requirements that will provide adequate hospital, medical and related facilities to people in the state providing, as far as possible, for distribution throughout the state to make all types of services reasonably acceptable to all persons;

(2) submit to federal agencies state plans including those for the hospital, medical and related facilities construction program and modifications of it providing for the establishment and operation of hospital, medical and related facilities construction activities in accordance with federal requirements;

(3) make application to the appropriate federal agency for funds to assist in carrying out the survey and planning activities. Federal funds shall be deposited in the state treasury and used only for the purposes

specified by law. Money which is not spent for those purposes shall be repaid to the federal government;

(4) after approval of a plan by the appropriate federal agency, publish a description in newspapers having general circulation throughout the state, and make the plan available upon request to all persons or organizations;

(5) inspect construction or alteration projects approved by the appropriate federal agency and, if satisfactory, certify that work has been performed on the project or purchases made in accordance with approved plans and specifications, and that payment of federal funds is due to the applicant;

(6) require reports, and make inspections and investigations, as necessary or required by the federal agency;

(7) contract with consultants for services which are performed on a part-time or fee-for-service basis not involving administrative duties.

History: En. Sec. 184, Ch. 197, L. 1967.

69-5306. Publicity as to plans before they are submitted to a federal agency—public hearing. Before submitting plans to a federal agency, the state board shall give adequate publicity including a general description of the plans, and may hold a public hearing at which all persons or organizations may express their views.

History: En. Sec. 185, Ch. 197, L. 1967.

69-5307. Minimum standards for maintenance and operation of hospitals, medical and related facilities. After consultation with the council, the state board shall prescribe minimum standards for the maintenance and operation of hospitals, medical and related facilities receiving federal aid for construction under the state plan.

History: En. Sec. 186, Ch. 197, L. 1967.

69-5308. State plan. The state plan shall specify relative need for the projects included in the construction program in accordance with regulations prescribed under federal acts, and provide for the construction, maintenance, and operation in the order of relative need determined by the state board.

History: En. Sec. 187, Ch. 197, L. 1967.

69-5309. Applications for construction projects—who may file. Applications for hospital, medical and related facilities construction projects may be submitted by a state agency, a political subdivision, or by any public or nonprofit agency authorized to construct and operate a hospital, medical or related facility.

History: En. Sec. 188, Ch. 197, L. 1967.

69-5310. Allowance of application, forwarding to federal agency—denial of application, opportunity for hearing. If the state board, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that an application com-

plies with state and federal requirements and conforms to the state plan, the state board shall forward the application to the appropriate federal agency. If an application is denied, the applicant shall have an opportunity for a fair hearing.

History: En. Sec. 189, Ch. 197, L. 1967.

69-5311. Federal funds—acceptance authorized—use and disposition. The state board may accept federal funds. All federal funds received shall be deposited in the state treasury. The executive officer shall transmit federal funds to applicants for work performed, or purchases made, in carrying out approved projects. Claims for all payments shall be approved by the executive officer.

History: En. Sec. 190, Ch. 197, L. 1967.

69-5312. Consolidated applications by two or more counties. Boards of county commissioners of two (2) or more counties may submit a consolidated application for a single hospital, medical facility, or health center serving each of the counties included in the application. Any statutes investing counties with powers to construct, maintain, and operate hospitals or medical facilities directly, or by lease or contract, may be utilized for this joint action. All statutes governing submission of questions of establishing a hospital or medical facility, hospital or medical facility construction, issuance of bonds, method of operation, and requiring a majority vote of taxpayers on the questions shall apply. Concurrent and joint action of two (2) or more counties and approval by a majority of the voters in each county is required to authorize the issuance of bonds, construction, and contracts under a consolidated plan.

History: En. Sec. 191, Ch. 197, L. 1967.

69-5313. Discrimination prohibited in subsidized facilities. No person shall deny another person the use of any facility constructed in whole or in part under this chapter in a professional or other capacity, or discriminate against another person on the grounds of race, color, or national origin.

History: En. Sec. 192, Ch. 197, L. 1967.

CHAPTER 54—CESSPOOLS, SEPTIC TANKS, AND PRIVIES

Section 69-5401. License required.
69-5402. Application for license—form and contents.
69-5403. Licenses—title—numbering—duration—transfer prohibited—fees, disposition.
69-5404. Vehicle of licensee—marking.
69-5405. Permit from local health officer—examination—fee.
69-5406. Rules for administration of chapter—adoption.
69-5407. License not required of municipalities.
69-5408. Enforcement of chapter—violation of this chapter or order of a health officer is a misdemeanor.

69-5401. License required. No person, partnership, firm, or corporation shall engage in the business of cleaning cesspools, septic tanks or

privies unless licensed by the state department of health. The department may deny, suspend, or revoke a license for noncompliance with this chapter or rules adopted by the state board of health.

History: En. Sec. 193, Ch. 197, L. 1967.

69-5402. Application for license—form and contents. Application for a license is made to the department. The application shall show:

(1) the name in full, and if a partnership, the name of each partner;

(2) place of business;

(3) place of residence of the applicant or applicants;

(4) number of units and type of equipment to be used;

(5) a statement that the applicant will comply with rules adopted by the state board under this chapter;

(6) the signature of the individual, authorized officer of the firm or corporation, or managing partner of the partnership applying.

History: En. Sec. 194, Ch. 197, L. 1967.

69-5403. Licenses—title—numbering—duration—transfer prohibited—fees, disposition. Licenses issued by the department shall be titled "Montana Sanitary Licensee," and numbered consecutively beginning with the number ten (10). Licenses expire on December 31 of each calendar year. Licenses are not transferable. The fee for each license is five dollars ($5). Fees shall be deposited in the state general fund.

History: En. Sec. 195, Ch. 197, L. 1967.

69-5404. Vehicle of licensee—marking. Persons licensed shall paint on the side of each vehicle used the words "Montana Sanitary Licensee" and immediately under those words shall paint "License No. — (insert number of license)." License numbers shall be at least one and one-half (1½) inches high and in a distinct color contrasting with the background.

History: En. Sec. 196, Ch. 197, L. 1967.

69-5405. Permit from local health officer—examination—fee. Each person licensed under the provisions of this chapter who cleans a cesspool, septic tank, or privy shall secure a permit from the local health officer, or his authorized representative, having jurisdiction. The permit shall be issued only after satisfactory examination of the applicant's knowledge of sanitary principles, laws and ordinances; reliability in observing sanitary laws; and ability to clean the septic tank, cesspool, or privy without endangering human health or safety. The permit shall contain the name of the applicant, date of cleaning, name and address of the owner of the cesspool, septic tank or privy, and the place and means of disposing of the waste. The person issuing the permit shall be paid a fee of one dollar ($1).

History: En. Sec. 197, Ch. 197, L. 1967.

69-5406. Rules for administration of chapter—adoption. The state board shall adopt necessary rules for carrying out the provisions of this chapter.

History: En. Sec. 198, Ch. 197, L. 1967.

69-5407. License not required of municipalities. The license provisions of this chapter do not apply to any county or municipality which desires to clean septic tanks, cesspools, or privies publicly owned or controlled by them. However, counties and municipalities shall comply with rules adopted by the state board for cleaning cesspools, septic tanks, or privies.

History: En. Sec. 199, Ch. 197, L. 1967.

69-5408. Enforcement of chapter—violation of this chapter or order of a health officer is a misdemeanor. State and local health officers, and their representatives, are responsible for the enforcement of this chapter. Any person who fails to comply with provisions of this chapter or orders of a health officer made under this chapter for the protection of human health is guilty of a misdemeanor. Upon conviction he shall be fined not more than one hundred dollars ($100), imprisoned for not more than thirty (30) days, or both, for each offense. Fines collected shall be deposited in the general fund of the county in which the action is brought.

History: En. Sec. 200, Ch. 197, L. 1967.

CHAPTER 55—PUBLIC SWIMMING POOLS AND BATHING PLACES

Section 69-5501. Public policy of this state.
69-5502. Definitions.
69-5503. Sanitation—rules—adoption by state board of health.
69-5504. Sanitation—supervision by state department of health.
69-5505. Inspections by health authorities—enjoining actions in violation of this chapter—abatement of nuisances.
69-5506. Reports of inspections—publication by state department of health.
69-5507. Construction plans—review by state department of health.
69-5508. Sanitary operation—records—information furnished to state department of health.
69-5509. Methods of operation required to be sanitary, healthful and safe.
69-5510. Unauthorized construction or operation—public nuisance.
69-5511. Penalty for violations.

69-5501. Public policy of this state. It is the public policy of this state to regulate public swimming pools and public bathing places to protect public health.

History: En. Sec. 201, Ch. 197, L. 1967.

69-5502. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Public swimming pool" means any artificial pool and bathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of his family, or their invited guests;

(b) medicinal hot water baths for individual use.

(2) "Public bathing place" means a body of water and bathhouses and related appurtenances operated for the public.

(3) "Person" means a person, firm, partnership, corporation, organization, the state, or any political subdivision of the state.

History: En. Sec. 202, Ch. 197, L. 1967.

69-5503. Sanitation—rules—adoption by state board of health. The state board of health shall adopt rules for sanitation in public swimming pools and public bathing places to protect public health.

History: En. Sec. 203, Ch. 197, L. 1967.

69-5504. Sanitation—supervision by state department of health. The state department of health shall supervise the sanitation of public swimming pools and public bathing places.

History: En. Sec. 204, Ch. 197, L. 1967.

69-5505. Inspections by health authorities—enjoining actions in violation of this chapter—abatement of nuisances. Authorized employees of the department and local boards of health may:

(1) at reasonable times inspect public swimming pools and public bathing places to determine if provisions of this chapter and rules of the state board are being violated;

(2) request an injunction from the district court to enjoin actions in violation of this chapter or rules adopted by the state board;

(3) bring actions to abate nuisances maintained in violation of this chapter in the manner provided by law for the summary abatement of other public nuisances;

(4) enforce rules adopted by the state board.

History: En. Sec. 205, Ch. 197, L. 1967.

69-5506. Reports of inspections—publication by state department of health. The department may publish reports of inspections authorized by section 205 (1) [69-5505 (1)] of this act.

History: En. Sec. 206, Ch. 197, L. 1967.

69-5507. Construction plans—review by state department of health. A person planning to construct a public swimming pool or develop a public bathing place shall submit plans to the department prior to construction. The department shall review the plans and approve or disapprove them.

History: En Sec. 207, Ch. 197, L. 1967.

69-5508. Sanitary operation — records — information furnished to state department of health. Each person operating a public swimming pool or public bathing place shall:

(1) operate the pool or public bathing place in a sanitary and safe manner;

(2) keep records of public health and safety information required by the department;

(3) furnish information to the department on forms prescribed by it.

History: En. Sec. 208, Ch. 197, L. 1967.

69-5509. Methods of operation required to be sanitary, healthful and safe. Public swimming pools and public bathing places, including pool structures, methods of operation, source of water supply, methods of water purification, lifesaving apparatus, safety measures for bathers, and personal cleanliness measures for bathers, shall be sanitary, healthful, and safe.

History: En. Sec. 209, Ch. 197, L. 1967.

69-5510. Unauthorized construction or operation — public nuisance. The construction or operation of a public swimming pool or public bathing place contrary to the provisions of this chapter or rules adopted by the state board under the provisions of this chapter is a public nuisance and dangerous to public health.

History: En. Sec. 210, Ch. 197, L. 1967.

69-5511. Penalty for violations. A person who violates this chapter, or rules adopted by the state board under the provisions of this chapter, is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than twenty-five dollars ($25) nor more than five hundred dollars ($500), imprisonment for not more than six (6) months, or both. Each day that a violation continues is a separate violation.

History: En. Sec. 211, Ch. 197, L. 1967.

CHAPTER 56—TOURIST CAMPGROUNDS

Section 69-5601. "Tourist campground" defined.
69-5602. Rules for operation—adoption by state board of health.
69-5603. License from state department of health required—rules to be posted on grounds—inspections by health officers.
69-5604. Application for license—form and contents—license fee—duration of license.
69-5605. Denial of application for or revocation of license—grounds—inspection of grounds—license fees, collection and deposit.
69-5606. Denial of application for or revocation of license—request for hearing before the state board, notice.
69-5607. Violations and penalty—disposition of fines.

69-5601. "Tourist campground" defined. As used in this chapter, unless the context clearly indicates otherwise, "tourist campground" means a place used for public camping primarily by automobile tourists. The term includes places where persons can camp or secure cabins or tents, trailer courts, and similar public places.

History: En. Sec. 212, Ch. 197, L. 1967.

69-5602. Rules for operation—adoption by state board of health. The state board of health shall adopt rules for operating tourist campgrounds to insure sanitation and protect public health.

History: En. Sec. 213, Ch. 197, L. 1967.

69-5603. License from state department of health required—rules to be posted on grounds—inspections by health officers. A person operating a tourist campground shall:

(1) obtain a license from the state department of health;

(2) post copies of rules adopted by the state board under the provisions of this chapter in conspicuous places on the tourist campgrounds;

(3) permit inspections by state or local health officers at all reasonable times.

History: En. Sec. 214, Ch. 197, L. 1967.

69-5604. Application for license—form and contents—license fee—duration of license. Application for a license is made to the department on forms, and containing information, required by the department. Each application shall be accompanied by a fee of five dollars ($5). Licenses expire on December 31 of the year in which they are issued.

History: En. Sec. 215, Ch. 197, L. 1967.

69-5605. Denial of application for or revocation of license—grounds—inspection of grounds—license fees, collection and deposit. (1) The department may deny an application for a license or revoke a license that has been issued if a tourist campground does not comply with provisions of this chapter and rules adopted by the state board under provisions of this chapter.

(2) The department shall:

(a) inspect tourist campgrounds during reasonable hours as necessary;

(b) supervise the inspection of tourist campgrounds by local health officers, sanitarians or other authorized persons as necessary;

(c) collect a fee of five dollars ($5) for each license issued and deposit receipts in the state general fund.

History: En. Sec. 216, Ch. 197, L. 1967.

69-5606. Denial of application for or revocation of license—request for hearing before the state board, notice. If the department denies an application for a license or revokes a license that has been issued, an applicant or licensee is entitled to a hearing before the state board to show cause why the action should not be taken. If a hearing is desired, the applicant or licensee shall notify the executive officer of the department in writing before the sixth day after notice of the denial or revocation is received.

History: En. Sec. 217, Ch. 197, L. 1967.

69-5607. Violations and penalty—disposition of fines. A person who violates provisions of this chapter, or rules adopted by the state board under provisions of this chapter, is guilty of a misdemeanor. On conviction he shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100). Fines shall be paid to the county treasurer of the county in which the tourist campground is located. The county treasurer shall send all fines collected to the state treasurer for deposit in the state general fund.

History: En. Sec. 218, Ch. 197, L. 1967.

Effective Date

Section 219 of Ch. 197, Laws 1967 read "Sections 212, 213, 214, 215, 216, 217, and 218 shall be effective January 1, 1968."

CHAPTER 57—GENERAL PENALTY

Section 69-5701. Violations of public health laws or rules of state board of health.

69-5701. Violations of public health laws or rules of state board of health. Anyone who violates any provision of this act, or any rule adopted by the state board under the provisions of this act, for which no penalty is specified, is guilty of a misdemeanor.

History: En. Sec. 221, Ch. 197, L. 1967.

Separability Clause

Section 222 of Ch. 197, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 223 of Ch. 197, Laws 1967 read "Sections 69-101 through 69-103, 69-105, 69-105.1, 69-105.2, 69-105.3, 69-105.4, 69-107, 69-109 through 69-127, 69-201 through 69-208, 69-301, 69-303 through 69-319, 69-401 through 69-404, 69-501 through 69-536, 69-536.1, 69-536.2, 69-537 through 69-539, 69-601 through 69-609, 69-701 through 69-712, 69-801 through 69-817, 69-901, 69-902, 69-1001 through 69-1025, 69-1122 through 69-1138, 69-1201 through 69-1220, 69-1301 through 69-1320, 69-1326 through 69-1346, 69-2001 through 69-2004, 69-2201, 69-2202, 69-2301 through 69-2310, 69-2407 through 69-2421, 69-2501 through 69-2504, 69-2601 through 69-2603, 69-2901 through 69-2918, 69-3001 through 69-3004, 69-3007 through 69-3016, 69-3016.1, 69-3017, 69-3018, 69-3101 through 69-3112, 69-3201 through 69-3210, and 69-3801 through 69-3813, R. C. M. 1947 are repealed."

CHAPTER 58—CONTROL OF IONIZING RADIATION

Section 69-5801. Declaration of policy.
69-5802. Purpose.
69-5803. Definitions.
69-5804. State radiation control agency.
69-5805. Radiation advisory committee.
69-5806. Licensing and registration of persons handling materials or equipment using such materials.
69-5807. Inspection.
69-5808. Records.
69-5809. Federal-state agreements.
69-5810. Inspection agreements and training programs.
69-5811. Conflicting laws.
69-5812. Administration procedure and judicial review.
69-5813. Prohibited uses.
69-5814. Impounding of materials.
69-5815. Exemptions.
69-5816. Penalties.

69-5801. Declaration of policy. It is the policy of the state of Montana in furtherance of its responsibility to protect the public health and safety:

(1) To institute and maintain a regulatory program for sources of ionizing radiation so as to provide for compatibility with the standards and regulatory programs of the federal government, a single, effective system of regulation within the state, and a system consistent in so far as possible with those of other states; and

(2) To institute and maintain a program to permit development and utilization of sources of ionizing radiation for peaceful purposes consistent with the health and safety of the public.

History: En. Sec. 1, Ch. 108, L. 1967.

Title of Act

An act to institute and maintain in the board of health a regulatory program

for sources of ionizing radiation; to provide for compatibility with the standards and regulatory provisions of the federal government for a single effective system of registration of persons handling radioactive materials or equipment using such materials; setting forth penalties for noncompliance.

69-5802. Purpose. It is the purpose of this act to provide:

(1) A program of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;

(2) A program to promote an orderly regulatory pattern within the state, among the states and between the federal government and the state and facilitate inter-governmental co-operation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to by-product, source, and special nuclear materials; and

(4) A program to permit maximum utilization of sources of ionizing radiation consistent with the health and safety of the public.

History: En. Sec. 2, Ch. 108, L. 1967.

69-5803. Definitions. (1) By-product material means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(2) Ionizing radiation means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons and other nuclear particles but not sound or radio waves or visible, infrared or ultra-violet light.

(3) General license means a license effective pursuant to regulations promulgated by the board of health without the filing of an application to transfer, acquire, own, possess or use quantities of or devices or equipment utilizing quantities of by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially. General licenses are effective without the filing of applications with the board of health or the issuing of licensing documents to the user.

(4) Specific license means a license, issued after application, to use, manufacture, produce, transfer, receive, acquire, own or possess quantities of, or devices or equipment utilizing quantities of by-product, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(5) Person means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States atomic energy commission, any successor thereto, or federal agencies licensed by the atomic energy commission.

(6) Source material means uranium, thorium or any other material which the board of health or the United States atomic energy commission declares by order to be source material or ores containing one (1) or

more of the foregoing materials, in such concentration as the board of health or the atomic energy commission declares by order to be source material after the atomic energy commission has determined the material in such concentration to be source material.

(7) Special nuclear material means plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the board of health or the United States atomic energy commission, or any successor thereto declares by order to be special nuclear material or any material artificially enriched by any of the foregoing, but does not include source material.

(8) Registration means the registering by the legal owner, user or authorized representative with the board of health in the manner prescribed by rule or regulation of sources of ionizing radiation.

History: En. Sec. 3, Ch. 108, L. 1967.

69-5804. State radiation control agency. (1) The board of health is hereby designated as the state radiation control agency.

(2) In accordance with the laws of the state of Montana, the board of health may employ, compensate and prescribe the powers and duties of such individuals as may be necessary to carry out the provisions of this act.

(3) The board of health may for the protection of the occupational and public health and safety:

(a) Develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing radiation;

(b) Develop programs and formulate, adopt, promulgate, and repeal rules and regulations with due regard for compatibility with federal programs for licensing and regulation of by-product, source, radioactive waste materials and special nuclear materials and other radioactive materials. These rules and regulations shall cover equipment and facilities, methods for transporting, handling and storage of radioactive materials, permissible levels of exposure, technical qualifications of personnel, required notification of accidents and other incidents involving radioactive materials, survey methods and results, methods of disposal of radioactive materials, posting and labeling of areas and sources and methods and effectiveness of controlling individuals in posted and restricted areas;

(c) Formulate, adopt, promulgate and repeal rules and regulations relating to control of other sources of ionizing radiation. These rules and regulations shall cover equipment and facilities, permissible levels of exposure to personnel, posting of areas, surveys and records;

(d) Issue such orders or modifications thereof as may be necessary in connection with proceedings under section 5 [69-5805] of this act;

(e) Advise, consult and co-operate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions and with groups concerned with control of sources of ionizing radiation;

(f) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its func-

tions, from the federal government and from other sources, public or private;

(g) Encourage, participate in, or conduct studies, investigations, training, research and demonstrations, relating to control of sources of ionizing radiation;

(h) Collect and disseminate information relating to control of sources of ionizing radiation, including:

1. Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions and revocations;

2. Maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under the provisions of this act and any administrative or judicial action pertaining thereto;

3. Maintenance of a file of all rules and regulations relating to regulation of sources of ionizing radiation, pending or promulgated and proceedings thereon.

History: En. Sec. 4, Ch. 108, L. 1967.

69-5805. Radiation advisory committee. The board of health shall appoint a radiation advisory committee of five (5) members who represent interested groups in the state. Members of the committee shall serve at the discretion of the board of health and shall be reimbursed for necessary and actual expense incurred in attendance at meetings or for authorized business of the board of health. The committee shall furnish such technical advice as may be required on matters relating to the radiation control program.

History: En. Sec. 5, Ch. 108, L. 1967.

69-5806. Licensing and registration of persons handling materials or equipment using such materials. (1) The board of health shall provide by rule or regulation for general or specific licensing of persons to receive, possess, or transfer radioactive materials and devices or equipment utilizing such materials. Such rules or regulations shall provide for amendment, suspension, or revocation of licenses pursuant to section 11 [69-5811] of this act;

(2) Each application for a specific license shall be in writing and shall state such information as the board of health by rule or regulation may determine to be necessary to decide the technical, insurance and financial qualifications or any other qualification of the applicant as the board of health may deem reasonable and necessary to protect the occupational and public health and safety. The board of health may at any time after the filing of the application and before the expiration of the license, require further written statements and may make such inspections as the board of health may deem necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended or revoked. All applications and statements shall be signed by the applicant or licensee. The board of health may require any applications or statements to be made under oath or affirmation;

(3) Each license shall be in such form and contain such terms and conditions as the board of health may by rule or regulation prescribe;

(4) No license issued pursuant to the provisions of this act and no right to possess or utilize sources of ionizing radiation granted by any license shall be assigned or in any manner disposed of;

(5) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations or orders issued in accordance with the provisions of this act;

(6) The board of health may require registration and inspection of persons dealing with sources of ionizing radiation which do not require a specific license and may require compliance with specific safety standards to be promulgated by the board of health;

(7) The board of health is authorized to exempt certain users from the licensing or registration requirements set forth in this section when the board of health makes a finding that the exemption of such users will not constitute a significant risk to the health and safety of the public;

(8) Any report of investigation or inspection, or any information concerning trade secrets or secret industrial processes obtained under this act shall not be disclosed or opened to public inspection except as may be necessary for the performance of the functions of the board of health;

(9) Rules and regulations promulgated pursuant to this act may provide for recognition of other state or federal licenses as the board of health may deem desirable, subject to such registration requirements as the board of health may prescribe.

History: En. Sec. 6, Ch. 108, L. 1967.

69-5807. Inspection. The board of health or its duly authorized representatives shall have the power to enter at all reasonable times upon any private or public property within the jurisdiction of the board of health, other than a private dwelling, for the purpose of determining whether or not there is compliance with or violation of the provisions of this act and rules and regulations promulgated thereunder, and the owner, occupant, or person in charge of such property shall permit such entry and inspection. Entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

History: En. Sec. 7, Ch. 108, L. 1967.

69-5808. Records. (1) The board of health shall require each person who acquires, possesses or uses a source of ionizing radiation to maintain records relating to its receipt, storage, transfer, or disposal and such other records as the board of health may require, subject to such exemptions as may be provided by rules and regulations;

(2) The board of health shall require each person who acquires, possesses, or uses a source of ionizing radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules and regulations of the board of health. Copies of these records and those required to be kept by sub-

section (1) of this section shall be submitted to the board of health on request;

(3) The board of health shall adopt reasonable regulations, compatible with those of the United States atomic energy commission, or the national committee on radiation protection, pertaining to reports of exposure of personnel to radiation. Such regulations shall require that reports of excessive exposure be made to the individual exposed and to the board of health, and shall make provision for periodic and terminal reports to individuals for whom personnel monitoring is required;

(4) The provisions of this act shall not be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

History: En. Sec. 8, Ch. 108, L. 1967.

69-5809. Federal-state agreements. (1) The governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this state;

(2) Any person who, on the effective date of an agreement under subsection (1) of this section, possesses a license issued by the federal government shall be deemed to possess the same pursuant to this act, which shall expire either ninety (90) days after receipt from the board of health of a notice of expiration of such license, or on the date of expiration specified in the federal license, whichever is earlier.

History: En. Sec. 9, Ch. 108, L. 1967.

69-5810. Inspection agreements and training programs. (1) The board of health on behalf of the state of Montana may enter into an agreement or agreements with the federal government, other states or interstate agencies, whereby this state shall perform on a co-operative basis with the federal government, other states or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation;

(2) The board of health and any other appropriate state agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this act and may make said personnel available for participation in any program or programs of the federal government, other states or interstate agencies in furtherance of the purposes of this act.

History: En. Sec. 10, Ch. 108, L. 1967.

69-5811. Conflicting laws. Ordinances, resolutions or regulations now or hereafter in effect of the governing body of a municipality or county relating to by-product, source and special nuclear materials shall not be superseded by this act; provided, that such ordinances or regulations are and shall continue to be consistent with the provisions of this act, amendments thereto, and rules and regulations thereunder.

History: En. Sec. 11, Ch. 108, L. 1967.

69-5812. Administration procedure and judicial review. (1) In any proceeding under this act for granting, suspending, revoking or amending any license, or for determining compliance with, or granting exceptions from, rules and regulations promulgated in accordance with this chapter, the board of health shall first afford an opportunity for a hearing on the record upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding;

(2) Whenever the board of health finds that an emergency exists requiring immediate action to protect the public health and safety, the board of health may, without notice or hearing, issue a regulation or order reciting the existence of such emergency and requiring that such action be taken as is deemed necessary to meet the emergency. Notwithstanding any provision of this act to the contrary, such regulation or order shall become effective immediately. Any person to whom such regulation or order is directed shall comply therewith immediately, but on application to the board of health, shall be afforded a hearing promptly after application has been made. On the basis of such a hearing the emergency regulation or order shall be continued, modified, or revoked within thirty (30) days after such hearing or when the emergency no longer exists.

History: En. Sec. 12, Ch. 108, L. 1967.

69-5813. Prohibited uses. It shall be unlawful for any person to use, manufacture, produce, or knowingly transport, transfer, receive, acquire, own or possess any source of ionizing radiation unless such person is licensed by or registered with the board of health in accordance with the provisions of this act, rules and regulations issued hereunder.

History: En. Sec. 13, Ch. 108, L. 1967.

69-5814. Impounding of materials. The board of health shall have the authority in the event of an emergency to impound or order the impounding of sources of ionizing radiation, in the possession of any person who is not equipped to observe or who fails to observe the provisions of this act or any rules or regulation promulgated thereunder.

History: En. Sec. 14, Ch. 108, L. 1967.

69-5815. Exemptions. This act shall not apply to the following sources or conditions:

(1) Electrical equipment that is not intended primarily to produce radiation, and that, by nature of design, does not produce radiation at the point of nearest approach at a weekly rate higher than one-tenth (1/10) the appropriate limit for any critical organ exposed. The production testing or production servicing of such equipment shall not be exempt;

(2) Radiation machines during process of manufacture, or in storage or transit;

(3) Any radioactive material while being transported in conformity with regulations adopted by the atomic energy commission, or any successor thereto, or the interstate commerce commission, and specifically applicable to the transportation of such radioactive materials;

(4) No exemptions under this section are granted for those quantities or types of activities which do not comply with the established rules and regulations promulgated by the atomic energy commission, or by any successor thereto.

History: En. Sec. 15, Ch. 108, L. 1967.

69-5816. Penalties. No person shall acquire, own, possess or use any radioactive by-product material, source material, special nuclear materials or other radioactive materials occurring naturally or produced artificially, without having been granted a license therefor from the board of health or transfer to another or dispose of said materials without first having been granted approval of the board of health therefor, in accordance with the administrative rules and regulations of the board of health.

Any person who violates this section is guilty of a misdemeanor punishable by a fine of not less than one hundred dollars ($100) and not more than one thousand dollars ($1,000), or by confinement in the county jail of not less than thirty (30) days and not more than ninety (90) days, or by both such fine and imprisonment.

History: En. Sec. 16, Ch. 108, L. 1967.

Repealing Clause

Section 17 of Ch. 108, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 59—WATER TREATMENT PLANTS AND DISTRIBUTION SYSTEMS

Section 69-5901. Legislative findings—policy of state.
69-5902. Definitions.
69-5903. Board of certification to assist director—composition—terms of members—meetings and organization—examination of candidates for certification.
69-5904. Classification of treatment plants and distribution systems.
69-5905. Certification of operators by director.
69-5906. Operator of treatment plant or distribution system to be certified—certification of operators previously in charge or certified by other agency.
69-5907. Issuance of operators' certificates—display—annual renewal—revocation—termination of employment—reinstatement of certificate.
69-5908. Application for operator's certificate—payment of fee—use of proceeds.
69-5909. Term of operator's certificate—renewal fee—suspension and revocation—reinstatement.
69-5910. Rules and regulations of board.
69-5911. Unlawful to operate treatment plant or distribution system without certified operator.
69-5912. Violation a misdemeanor—each day as separate offense.

69-5901. Legislative findings—policy of state. It is hereby found and declared that the health and welfare of Montana citizens are jeopardized by persons not properly qualified to operate the water supply systems and that Montana's waters are endangered by persons not properly qualified to operate the waste water treatment plants. It is declared the public policy of this state to control by certifying those persons working in these occupations in order to protect the public health and safety.

History: En. Sec. 1, Ch. 239, L. 1967.

Title of Act

An act to protect the public health and to conserve and protect the water resources of the state, to provide for the classification of all public and privately owned water supply systems and all public and privately owned waste water treatment plants, to require the examination and certification of the competency of operators, to supervise the operation of water supply systems and waste water plants, to prescribe the powers and duties of the state board of health, to provide for the promulgation of rules and regulations, to provide a board of certification, and to prescribe penalties for the violation of this act.

69-5902. Definitions. As used in this act, unless the context clearly indicates otherwise:

(1) "Board" means the board of certification for water and waste water operators.

(2) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system or waste water treatment plant. Operators of plants or systems serving less than ten (10) families are excluded from this act.

(3) "Director" means the director of the division of environmental sanitation of the Montana state board of health.

(4) "Waste water treatment plant" means facilities designed to remove solids, bacteria or other harmful constituents of sewage, industrial wastes or other wastes and which discharges an effluent directly into Montana's waters at any time during the year and which serves ten (10) or more families or serves an industry employing ten (10) or more persons.

(5) "Water supply system" means the system of pipes, structures and facilities through which the water is obtained, treated, sold, distributed or otherwise offered to the public for household use or any use by humans and shall serve ten (10) or more families or shall serve an industry employing ten (10) or more persons.

(6) "Water treatment plant" means that portion of the water supply system which in some way alters either the physical, chemical or bacteriological quality of the water rendering it safe and palatable for human use.

(7) "Water distribution system" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply source to the premises of the consumer and which serves ten (10) or more families or supplies an industry employing ten (10) or more persons.

(8) "Certificate" means a certificate of competency issued by the director stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(9) "Montana's waters" means all streams and lakes, including all rivers and lakes bordering on the state, wells, springs, irrigation systems, marshes, watercourses, waterways, drainage systems and other bodies of water, surface and underground, natural or artificial, publicly or privately owned.

History: En. Sec. 2, Ch. 239, L. 1967.

69-5903. Board of certification to assist director—composition—terms of members—meetings and organization—examination of candidates for certification. (1) The governor of the state of Montana shall appoint a board of certification to advise and assist the director in the administration of the certification program. The board shall be composed of seven (7) persons as follows:

(a) Two (2) members who are currently employed water supply system or water treatment plant operators holding valid certificates or receiving certificates within one (1) year from the date of initiation of this program. One (1) of these members is required to hold, or receive within one (1) year from the date of initiation of this program, a certificate by examination of the highest class issued by the board. There is no restriction on the classification of the certificate held by the other operator.

(b) Two (2) members who are currently employed waste water treatment plant operators holding valid certificates or receiving certificates within one (1) year from the date of initiation of this program. One (1) of these members is required to hold, or receive within one (1) year from the date of initiation of this program, a certificate by examination of the highest class issued by the board. There is no restriction on the classification of the certificate held by the other operator.

(c) One (1) member presently serving on the faculty of a university or college whose major field is related to water supply systems, waste water treatment, chemical or civil engineering, chemistry or bacteriology.

(d) One (1) member who is a representative of a municipality required to employ a certified operator and who holds a position of either city manager, city engineer, director of public works, works manager, or their equivalent.

(e) The director of the division of environmental sanitation or a qualified member of his staff to be appointed by the director.

(2) Each member of the board, with the exception of the ex officio voting member from the state board of health, shall be appointed for a six (6) year term except in the case of the initial appointments the municipal representative shall be appointed for one (1) year, the faculty member shall be appointed for two (2) years, and the water and waste water operators shall be appointed for three (3), four (4), five (5) and six (6) years setting forth in the appointment the term in the beginning. Vacancies shall be filled by appointment by the governor for the unexpired terms. The director shall be the only permanent member of the board.

(3) Members of the first board shall at the call of the director, organize and elect from their number a chairman. Thereafter, annually when new members are appointed to the board a chairman shall be elected at the next board meeting. The director shall be the secretary to the board.

(4) The board shall hold at least one (1) examination each year for the purpose of examining candidates for certification at a time and place designated by the board. Those applicants whose competency is accept-

able to the board shall be recommended to the director for certification. Additional meetings may be called by the chairman, secretary, or upon written request of four (4) members of the board as may be reasonably necessary to carry out the provisions of this act. Four (4) members shall constitute a quorum. The members of the board shall receive a fee of twenty dollars ($20) per day while in session, plus the cost of actual and necessary expenses, including travel while discharging their official duties.

History: En. Sec. 3, Ch. 239, L. 1967.

69-5904. Classification of treatment plants and distribution systems. The director shall classify all water treatment plants, water distribution systems and waste water treatment plants with due regard to the size, type, physical conditions affecting such water treatment plants and distribution systems, character of waste waters to be treated and other physical conditions affecting such waste treatment plants and according to the skill, knowledge, and experience that the operator in responsible charge must have, to successfully supervise the operation of such water treatment plants and water distribution systems and such waste water treatment facilities so as to protect the public health and prevent unlawful pollution.

History; En. Sec. 4, Ch. 239, L. 1967.

69-5905. Certification of operators by director. The director shall certify persons as to their qualifications to supervise successfully the operation of such water and waste water treatment plants and the water distribution systems after considering the recommendations of the board.

History: En. Sec. 5, Ch. 239, L. 1967.

69-5906. Operator of treatment plant or distribution system to be certified—certification of operators previously in charge or certified by other agency. One (1) year following the effective date of this act, all water and waste water treatment plants and water distribution systems, whether publicly or privately owned, must be under the supervision of an operator whose competency is certified to by the director in a grade corresponding to the classification of that portion of the water or waste water supply system to be supervised; provided, however, that nothing herein contained shall prevent a governmental agency, corporation, or individual from continuing to employ in such capacity any person now in responsible charge of the operation of such works. Certificates of proper classification may be issued without examination to the person or persons certified by the governing board or owner to have been in responsible charge of the water and waste water plants and water distribution systems on the effective date of the act. A certificate so issued will be valid only in that plant. The board may consider for recommendation for certification the holder of a certificate issued by a governmental agency or equivalent certification board of another state, upon presentation to the board of satisfactory evidence that the applicant is in responsible charge of works located in Montana requiring a certified operator and that he has successfully

passed an examination at least equivalent to that required under section 3(4) and section 5 [69-5903(4) and 69-5905] of this act.

History: En. Sec. 6, Ch. 239, L. 1967.

69-5907. Issuance of operators' certificates—display—annual renewal—revocation—termination of employment—reinstatement of certificate. The director shall issue certificates attesting to the competency of operators. The certificates shall include the classification of the works which the operator is qualified to supervise. The certificate shall be prominently displayed in the office of the operator.

(1) Certificates shall continue in effect unless revoked by the director, but remain the property of the board and the certificate shall so state. Each certificate shall be renewed annually by payment of proper fee.

(2) The director may revoke the certificate of an operator following a hearing before the director or his designated representative, when it is found that the operator has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to properly perform his duties. Any person having his certificate revoked by the director may appeal to the certification board for a rehearing within ten (10) days of notification by the director, after which time the revocation proceedings are no longer applicable and revocation of the certificate becomes final.

(3) Operators who terminate employment may retain their certificate for two (2) years, providing that all other requirements are met. After two (2) years, a certificate will automatically be invalidated. Operators whose certificates are invalidated under the provisions of this act may be issued new certificates of like classification provided appropriate proof of competency is presented to the board. Successful completion of an examination may be required at the discretion of the board.

History: En. Sec. 7, Ch. 239, L. 1967.

69-5908. Application for operator's certificate—payment of fee—use of proceeds. Any person desiring to engage in the operation of a water treatment plant, water distribution system or waste water treatment plant shall first file an application with the board for a proper certificate. The board shall charge a fee of the same amount as the license cost set forth in section 9 [69-5909], for the filing of each application by any person and shall not act upon any application until such fee has been paid. All filing and certification fees collected hereunder shall be deposited with the state treasurer in the "Water and Waste Water Operators Certification Examining Board Account" in the earmarked revenue fund and shall be used to pay the expenses of the board as set forth in this act and for no other purpose. In the granting of such certificates, the board shall have due regard for the interest of the state of Montana to protect the drinking water supplies and the quality of its waters.

History: En. Sec. 8, Ch. 239, L. 1967.

69-5909. Term of operator's certificate—renewal fee—suspension and revocation—reinstatement. The terms for certificates issued under the

provisions of this act shall be from the first day of July of each year through the following 30th day of June. After the payment of the initial fee as provided for in the immediate preceding section, each certificate holder hereunder shall pay on or before the first day of each certificate year a renewal fee as set forth in the schedule below:

Class I —twenty dollars ($20)
Class II —fifteen dollars ($15)
Class III—ten dollars ($10)
Class IV—five dollars ($5)
Class V —three dollars ($3)

Any certificate issued after July 1st of the calendar year shall expire the following June 30th. If a certificate holder does not apply for a renewal of his certificate before the first day of any certificate year and remit to the board the necessary renewal fee, he shall have his certificate suspended by the board. If said certificate remains so suspended for a period of more than thirty (30) days after the first of any certificate year, it shall be revoked by the board; provided, however, that the board prior to such revocation shall notify the certificate holder by certified mail to the address on the issued certificate of its intention to revoke, at least ten (10) days prior to the time set for action to be taken by the board on such certificate. A certificate once revoked may not be reinstated unless it shall appear that an injustice has occurred through error or omission or other fact or circumstances indicating to the board that the certificate holder was not guilty of negligence or laches. If a person whose certificate has been revoked through his own fault desires to continue as a water or waste water plant operator, he must make application to the board as provided for in section 8 [69-5908] of this act. Successful completion of an examination may be required at the discretion of the board. Notice of suspension shall be given to certificate holder when such suspension occurs and to the proper official or owner of such treatment works or distribution system.

History: En. Sec. 9, Ch. 239, L. 1967.

69-5910. Rules and regulations of board. The board shall make such rules and regulations as are reasonably necessary to carry out the intent of this act. The rules and regulations shall include, but are not limited to, provisions establishing the basis for classification of treatment plants in accordance with section 4 [69-5904] of this act, provisions establishing qualifications of applicants, procedures for examination of candidates and such other provisions as are necessary for the administration of this act.

History: En. Sec. 10, Ch. 239, L. 1967.

69-5911. Unlawful to operate treatment plant or distribution system without certified operator. On or after one (1) year following the effective date of this act, it shall be unlawful for any person, firm or corporation, both municipal and private, operating a waste water treatment plant, water treatment plant or water distribution system to operate same unless the competency of the operator is duly certified to by the director

under the provisions of this act. Furthermore, it shall be unlawful for any person to perform the duties of an operator as defined herein without being duly certified under the provisions of this act.

History: En. Sec. 11, Ch. 239, L. 1967.

69-5912. Violation a misdemeanor—each day as separate offense. Any person, firm, or corporation, both municipal and private, violating any provisions of this act or the rules and regulations adopted hereunder is guilty of a misdemeanor. Each day of operation in violation of this act or any rules and regulations adopted hereunder shall constitute a separate offense.

History: En. Sec. 12, Ch. 239, L. 1967.

Separability Clause

Section 13 of Ch. 239, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are separable from the invalid applications."

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REVISED CODES OF MONTANA

VOLUME 4
Part 2
1967 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 4 (PART 2) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 4 (PART 2) THROUGH VOLUME 420, PACIFIC REPORTER (2ND SERIES)

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NEW LAWS IN VOLUME 4 (Part 2)

For index see pocket supplement to Replacement Volume 9

ENACTED IN 1963

School foundation program, anticipatory increase, 75-3612.1 to 75-3612.3.
University of Montana, revenue-producing facilities at, 75-216 to 75-223.
Validation of defective conveyances, 73-208.

ENACTED IN 1965

Child care institutions, school districts for, 75-5501 to 75-5508.
Community college districts, 75-4413 to 75-4430.
Consolidated intercounty school districts, 75-1813.1.
County poor funds, additional levy for, 71-106 note.
Driver education, 75-5301 to 75-5309.
Economic opportunity and poverty relief, 71-1601 to 71-1604.
Equalization aid to schools attended by children residing on state institution property, 75-3624.
Joint high school districts, 75-4612 to 75-4614.
Joint interstate school facilities, 75-3109 to 75-3113.
Residence determination for university tuition purposes, 75-506.2 to 75-506.6.
School safety patrols, 75-5401 to 75-5405.
Transportation of pupils living near school, 75-1641 to 75-1644.
Unification of county high schools, 75-4120.1, 75-4120.2.
Validation of defective conveyances, 73-209.

ENACTED IN 1967

Financing of schools, 75-3806.
Insurance for school districts, 75-1645.
Medical assistance, 71-1511 to 71-1526.
Residence determination for university tuition purposes, 75-506.7.
School district's leasing of buildings, 75-3114 to 75-3125.
State educational institutions, research, 75-313, 75-314.
Teachers' retirement system, funding, 75-2709.1, 75-2709.2.
Validation of defective conveyance, 73-210.
Vocational training centers, 75-4308.

AMENDMENTS IN VOLUME 4 (Part 2)

Agricultural experiment station, 75-706, 75-723.
Board of railroad commissioners, 72-102.
Exchange of property, 74-505.
Grain inspection laboratory, 75-807, 75-811.
Holidays, 75-2212.
Montana university system, 75-401, 75-402.
Public welfare,
- County welfare programs, 71-106, 71-216, 71-217, 71-222.
- Dependent children, aid to, 71-501.
- Fiscal management, 71-230, 71-901.
- General relief, 71-302, 71-307 to 71-309.
- Lien on property of recipient, 71-241.
- Old-age assistance, 71-402, 71-405, 71-406.
- Silicosis payments, 71-1003, 71-1004, 71-1008.
- State board and department, 71-202, 71-203, 71-206, 71-209, 71-211, 71-222, 71-241.

Railroad companies, 72-211, 72-224.

Recording conveyance, notice, 73-201.
Residence determination, tuition, 75-506.3, 75-506.4.
Retail installment sales, 74-608.
Sale of goods, 74-325.
School census, 75-1904.
School districts, 75-1802, 75-1804, 75-1805, 75-1810, 75-1813.
Schools in general,
Budget system, 75-1706, 75-1713.1, 75-1716, 75-1719, 75-1720, 75-1723, 75-1816, 75-4516.1, 75-4518.1, 75-4521, 75-4524, 75-4525.
Federal aid, acceptance, 75-5101.
Financing of schools, 75-3701, 75-3706, 75-3722, 75-3801, 75-3904, 75-3908.
Foundation program and state equalization aid, 75-3611 to 75-3621.
Health instruction, 75-2009.
High schools, 75-4601, 75-4607.
Indians, free tuition, 75-506.1.
Junior high schools, 75-4202.
Law enforcement academy, 75-5203, 75-5206, 75-5208.
Lunch program, 75-4802, 75-4803, 75-4805, 75-4806.
Special education for retarded and handicapped children, 75-5001, 75-5003, 75-5005.
State board of education, 75-106.
Teachers' rights and duties, 75-2401.
Certification of teachers, 75-2501, 75-2516, 75-2518, 75-2521.
Retirement system, 75-2701, 75-2703, 75-2707 to 75-2709.
Textbooks, 75-3503, 75-3505.
Transfer of students outside district, 75-1630, 75-4146, 75-4230.
Transportation of pupils, 75-3308, 75-3403, 75-3413, 75-3414.
Trustees' duties, 75-1632.
Vocational training centers, 75-4246, 75-4301 to 75-4307.
State educational institutions, control, 75-301 to 75-303, 75-310.
Superintendent of public instruction, 75-1301, 75-1315.
Teachers' rights and duties, retirement system, 75-2701, 75-2703 to 75-2705, 75-2707 to 75-2709.
Television districts, 70-426.
Truant juveniles, commitment to vocational or industrial school, 75-3002.
Trustees,
Duties, 75-1637.
Elections, 75-1604, 75-1614, 75-1618.
Meetings, 75-1621, 75-1622.
University of Montana, revenue-producing facilities, 75-216.
Veterans' burial, 71-120 to 71-122, 71-123, 71-125.

MONTANA REVISED CODES

TITLE 70—PUBLIC UTILITIES

Chapter 4. Television, 70-426.

CHAPTER 1—PUBLIC SERVICE COMMISSION—REGULATION OF PUBLIC UTILITIES

70-104. (3882) Power to prescribe rules of procedure—judicial power.

Informal Hearing

Fundamentals of a fair hearing, required by section 27, article III of the Montana constitution were denied parties opposing rate increase when a hearing was held by the public service commission without the presence of the opponents, and when the testimony of that hearing was not spread on the record. Cascade County Consumers Assn. v. Public Service Commission, 144 M 169, 394 P 2d 856, 864. (Dissenting opinion, 144 M 169, 394 P 2d 856, 875.)

Posthearing Audit

Where audit had been requested in utility rate increase case by opponents of increase, both sides were given ample time to present evidence and cross-examine witnesses, opponents were permitted to go into utility books with expert witnesses, and the public service commission hired independent rate experts, opponents were not denied a full and fair hearing because of posthearing audit made by the employees of the commission. Cascade County Consumers Assn. v. Public Service Commission, 144 M 169, 394 P 2d 856, 869. (Dissenting opinion, 144 M 169, 394 P 2d 856, 875.)

70-106. (3884) Power of commission to ascertain property values.

Leaseholds

Value of gas leases was properly included in rate base for power company seeking increased natural gas rate where there was ample testimony as to the leaseholds being used and useful to support the public service commission. Cascade County Consumers Assn. v. Public Service Commission, 144 M 169, 394 P 2d 856, 870. (Dissenting opinion, 144 M 169, 394 P 2d 856, 875.)

70-128. (3906) Action to set aside rates or charges fixed by commission.

Jurisdiction

Where neither the parties nor the facts are the same in two cases to set aside orders of public service commission, and no effort to consolidate the two cases was ever made, court in one case was not deprived of jurisdiction to enter judgment on theory that other court had first obtained jurisdiction of the appeal. Cascade County Consumers Assn. v. Public Service Commission, 144 M 169, 394 P 2d 856, 863. (Dissenting opinion, 144 M 169, 394 P 2d 856, 875.)

CHAPTER 4—TELEVISION

Section 70-426. Annexation of contiguous areas—petition—hearing—resolution

70-426. Annexation of contiguous areas—petition—hearing—resolution. The boundaries of a television district created by authority of Chapter 4 of Title 70 of the Revised Codes of Montana, 1947; may be altered and outlying areas be annexed from territory contiguous thereto in the following manner;

(a) A petition shall be signed by owners of television sets within the proposed area, equal in number to not less than fifty-one per cent (51%) of the registered electors who are owners of television sets within the area to be annexed;

(b) The petition shall designate the boundaries of the contiguous area to be annexed and ask that it be annexed to the existing television district;

(c) The petition shall be transmitted to the clerk and recorder and the hearing and notice thereof shall be the same as provided by sections 70-412 through 70-414, R.C.M. 1947;

(d) After the hearing the board of county commissioners shall adopt a resolution either annexing the area to the existing television district or denying the petition.

History: En. Sec. 1, Ch. 48, L. 1963.

Title of Act

An act providing that boundaries of a television district created by authority of Chapter 4 of Title 70 of the Revised Codes of Montana, 1947; may be altered and outlying areas may be annexed from territory contiguous to an existing television district; and providing the procedure for such annexation.

TITLE 71—PUBLIC WELFARE AND RELIEF

Chapter 1. County poor—care of, by county commissioners, 71-106, 71-120 to 71-123, 71-125.
2. Public Welfare Act part 1—to establish a state department of public welfare and county departments of public welfare, 71-202, 71-203, 71-206, 71-209, 71-211, 71-216, 71-217, 71-222, 71-230, 71-241.
3. Public Welfare Act part 2—general relief—to provide aid to the unemployable, destitute and those made destitute through lack of employment and all those in need of public assistance not eligible or otherwise cared for under other parts of this act, 71-302, 71-307 to 71-309.
4. Public Welfare Act part 3—to provide for old-age assistance to aged persons in need in conformity with Title 2 of the Federal Social Security Act of 1935 or as amended, 71-402, 71-405, 71-406.
5. Public Welfare Act part 4—to provide for aid to needy dependent children in conformity with part 4 of the Federal Social Security Act of 1935 or as amended, 71-501.
9. Public Welfare Act part 8—appropriations, disposition of funds and disbursements, 71-901.
10. Public Welfare Act part 9—to provide for payments to persons having silicosis, 71-1003, 71-1004, 71-1008.
15. Medical assistance, 71-1511 to 71-1526.
16. Economic opportunity and poverty relief, 71-1601 to 71-1604.

CHAPTER 1—COUNTY POOR—CARE OF, BY COUNTY COMMISSIONERS

Section 71-106. Support of poor and indigent persons—tax levy.
71-120. Burial of deceased military service men and women.
71-121. County of residence to bear expense.
71-122. Person conducting burial to report expense.
71-123. Duty of county clerk.
71-125. Act not to apply to nonresidents.

71-106. (4465.4) **Support of poor and indigent persons—tax levy.** The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To provide for the care and maintenance of the indigent sick, except as otherwise provided in other parts of this act, or the otherwise dependent poor of the county; erect and maintain hospitals therefor, or otherwise provide for the same, and for said purposes to levy and collect annually a tax on property not exceeding seventeen (17) mills, which levy shall be made at the time other tax levies are made on property, as provided by law.

History: En. Subd. 5, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 165, L. 1941; amd. Sec. 1, Ch. 23, L. 1943; amd. Sec. 11, Ch. 212, L. 1965; amd. Sec. 1, Ch. 69, L. 1967. See history of Sec. 16-1001.

Amendments

The 1965 amendment inserted "except as otherwise provided in other parts of this act" after "indigent sick" near the beginning of the second paragraph.

The 1967 amendment deleted "from each resident of the county, between the ages of twenty-one (21) and sixty (60) years a poll tax of two dollars ($2.00) at a meeting of the board of county commissioners held in December of any year, to become effective as of January first of

the following calendar year, and" after "annually"; substituted "seventeen (17) mills" for "three-fifths (3/5) of one per cent (1%)" after "not exceeding"; deleted "last mentioned" before "levy shall be made"; and deleted "or either of such levies when both are not required, and to expend not to exceed five per cent (5%) of any such levy for the collection of said tax, or of any part thereof. Whenever a resolution is adopted levying a per capita tax the clerk of the board shall immediately prepare and deliver copies thereof to the county assessor and county treasurer. The county assessor after receiving such copy of resolution, when making an assessment of any property belonging to any person liable for the payment of such per capita tax must enter on the assessment list, and also on any statement given the taxpayer, showing the value of the property assessed, the amount of such per capita tax, and the county treasurer when collecting the tax on such property shall at the same time collect the amount of such per capita tax as showing on said statement" at the end of the section.

Temporary Additional Tax Levy (Laws 1965, Ch. 221)

An act to authorize, in certain instances, the boards of county commissioners to levy an additional tax of not to exceed ten and one-half (10.5) mills for the county poor funds; providing for an effective date and repealing all acts and parts of acts in conflict herewith.

Section 1. Whenever the boards of county commissioners of counties coming within the provisions of this act find that the total amount that may be derived from all other sources will be inadequate to provide the revenue necessary to meet the appropriations for expenditures to be set forth in the poor fund section of the county budget, such county commissioners shall have the power and the authority to levy, not to exceed ten and one-half (10.5) mills, or so much thereof as may be necessary, to meet such expenditures, as an additional levy for the county poor fund after receiving a certificate authorizing them so to do, issued by the state board of equalization as in this act provided.

Section 2. On or before the second Monday in July, the boards of county commissioners of counties desiring to avail themselves of the provisions of this act shall submit a certified copy of their county poor fund budget to the state examiner and a like certified copy of such budget to the state department of public welfare. The state examiner shall examine such budget and if it is found by the state examiner that such budget is in compliance with the laws of this state and the rules and regulations of such examiner's office, he shall so certify and transmit such certified copy of the budget, together with his certificate thereon, to the state board of equalization. The state department of public welfare shall examine such budget and if it finds the expenditures and revenues of the previous year are correct and the estimated expenditures and revenues for the current year are approximately correct, then such department shall transmit such copy, together with its certificate, to the state board of equalization.

Section 3. The state board of equalization shall, on receipt of the certified copies of such county poor fund budget containing certificates as provided in section 2 hereof, examine such documents and if such board finds that a levy as authorized in section 1, or any part thereof, in addition to all other poor fund revenues is necessary, the said board shall certify the amount of the levy to be made by the county commissioners of such county and transmit such certificates to such board of county commissioners who shall thereupon be authorized to make such levy as is authorized.

Section 4. This act shall be in full force and effect from the first day of July, 1965 to the thirtieth day of June, 1967.

Section 5. All acts and parts of acts in conflict herewith are hereby repealed.

Prior laws, identical in nature, were Laws 1955, Ch. 73, in force from July 1, 1955 to June 30, 1957; Laws 1957, Ch. 36, in force from July 1, 1957 to June 30, 1959; Laws 1959, Ch. 46, in force from July 1, 1959 to June 30, 1961; Laws 1961, Ch. 10, in force from July 1, 1961 to June 30, 1963; and Laws 1963, Ch. 262, in force from July 1, 1963 to June 30, 1965.

71-107. (4465.5) Poor farm.

Cross-References

Power of county commissioners to lease county property for operation of a boarding home or nursing home for aged persons, sec. 16-1036.

Power of county commissioners to operate boarding home or nursing home for the aged, secs. 16-1037, 16-1038.

71-120. (4536) **Burial of deceased military service men and women.** It shall be the duty of the board of commissioners of each county in this state to designate some proper person in the county, who shall be known as veterans' burial supervisor, preferably an honorably discharged service man or woman, whose duty it shall be to cause to be decently interred the body of any honorably discharged service man or woman, who shall have served in any branch of the armed services of the United States and who may hereafter die or any service man or woman who died while in service during any declared or undeclared war, or female resident of the Montana veterans' home, who may hereafter die. Such burial shall not be made in any burial grounds or cemetery, or in any portion of any burial grounds or cemetery, used exclusively for the burial of pauper dead; provided,

(1) the expense of burial shall be the sum of one hundred fifty dollars ($150), to be paid by the county commissioners of the county in which the deceased was an actual bona fide resident at the time of death, and provided

(2) that the benefits hereof shall not be available in the case of any decedent whose executor, administrator or heirs waive the benefits hereof, and provided

(3) that the expense of each burial of a female resident of the Montana veterans' home, shall not exceed the sum of one hundred dollars ($100), to be paid by the county commissioners of the county in which the deceased person resided prior to her admittance to the Montana veterans' home.

In the event any such honorably discharged person, male or female, who shall have served in the armed services of the United States, and who is a resident of the state of Montana, shall die while temporarily absent from the state or county of his residence, then the provisions of this act shall apply, and the burial expenses not exceeding the amount herein specified shall be paid in the same manner as above provided.

Whenever any such honorably discharged person, male or female hereinbefore described shall die at any public institution of the state of Montana, other than the state veterans' home, and burial for any cause shall not be made in the county of the former residence of the deceased, the officers of said state institution, as aforesaid, shall provide the proper burial herein prescribed except that the expense of each burial shall not exceed the sum herein allowed, which expense shall be paid by the county in which the decedent resided at the time of entry into such institution, but no such burial shall be covered by any special or standing contract whereby the cost of burial is reduced below the maximum hereinbefore fixed, to the disparagement of proper interment.

History: En. Sec. 1, Ch. 39, L. 1903; re-en. Sec. 2065, Rev. C. 1907; amd. Sec. 1, Ch. 89, L. 1909; amd. Sec. 1, Ch. 109, L. 1911; amd. Sec. 1, Ch. 178, L. 1919; amd. Sec. 1, Ch. 194, L. 1921; re-en. Sec. 4536, R. C. M. 1921; amd. Sec. 1, Ch. 181, L. 1931; amd. Sec. 1, Ch. 163, L. 1937; amd. Sec. 1, Ch. 52, L. 1939; amd. Sec. 1, Ch. 25, L. 1945; amd. Sec. 1, Ch. 310, L. 1967.

Amendments

The 1967 amendment substituted "service man or woman" for "soldier, sailor or marine" before "whose duty it shall be" in the first sentence, substituted "service

man or woman" for "person, whether male or female, and including nurses" before "who shall have served" and inserted "or any service man or woman who died while in service during any declared or undeclared war, or female resident of the Montana veterans' home, who may hereafter die" after "who may hereafter die" at the end of the first sentence; added "and provided" at the end of subparagraph (2); added subparagraph (3); and, in the last paragraph, substituted "veterans'" for "soldiers'" before "home."

71-121. (4537) **County of residence to bear expense.** The expenses of such burial shall be paid by the county in which such service man or woman dies or if death occurs while in service, the county of his last residency, but if such deceased person has a residence in another county in this state than the one paying the expenses, the county of his residence shall refund the money advanced by the county where he died. The claimant shall be a relative or guardian unless otherwise directed. Expenses of such funeral shall be audited and paid as other expenses are audited and paid by the county.

History: En. Sec. 2, Ch. 39, L. 1903; re-en. Sec. 2066, Rev. C. 1907; re-en. Sec. 4537, R. C. M. 1921; amd. Sec. 2, Ch. 310, L. 1967.

Amendments

The 1967 amendment substituted "service man or woman dies or if death occurs while in service, the county of his last residency" for "soldier, sailor, or marine dies" near the beginning of the section and inserted the present second sentence.

71-122. (4538) **Person conducting burial to report expense.** It shall be the duty of the person appointed as provided in section 71-120 to cause such deceased person to be buried as provided in this act, and he shall immediately report his action to the clerk of the board of county commissioners, setting forth all the facts, together with the name, rank, or command, so far as is known, to which the deceased belonged, as such service man or woman, the date of death, place of burial, and his occupation while living, and also an itemized statement of the expenses incurred by reason of such burial.

History: En. Sec. 3, Ch. 39, L. 1903; re-en. Sec. 2067, Rev. C. 1907; amd. Sec. 1, Ch. 109, L. 1911; re-en. Sec. 4538, R. C. M. 1921; amd. Sec. 1, Ch. 310, L. 1967.

Amendments

The 1967 amendment substituted "service man or woman" for "soldier, sailor, or marine."

71-123. (4539) **Duty of county clerk.** It shall be the duty of the clerk of the board of county commissioners, upon receiving the report and statement of expenses provided for in this act, to transcribe, in a book to be kept for that purpose, all the facts contained in such report concerning such service man or woman. It shall also be the duty of said clerk, upon receiving the report of the burial of such deceased person, to make application to the proper authorities under the government of the United States for a suitable headstone, as provided by act of Congress, and to cause the same to be placed at the head of the grave of such service man or woman, the expense of which shall not exceed the sum of twenty dollars ($20) for cartage of and properly setting up each stone. The expense thus incurred shall be audited and paid as provided in section 71-121 for the burial expenses.

History: En. Sec. 4, Ch. 39, L. 1903; re-en. Sec. 2068, Rev. C. 1907; re-en. Sec. 4539, R. C. M. 1921; amd. Sec. 1, Ch. 146, L. 1963; amd. Sec. 4, Ch. 310, L. 1967.

Amendments

The 1963 amendment increased the allowance specified near the end of the second sentence from $10 to $20.

The 1967 amendment substituted "service man or woman" for "soldier, sailor, or marine" in the first and again in the second sentence and made minor changes in style.

71-125. (4541) **Act not to apply to nonresidents.** This act shall not apply to service men and women who, at the time of their death, shall not have a legal residence within this state.

History: En. Sec. 6, Ch. 39, L. 1903; re-en. Sec. 2070, Rev. C. 1907; re-en. Sec. 4541, R. C. M. 1921; amd. Sec. 1, Ch. 125, L. 1931; amd. Sec. 5, Ch. 310, L. 1967.

Amendments

The 1967 amendment deleted from the beginning of the section a clause reading "This act shall not apply to such soldiers, sailors or marines as may hereafter die in the state soldiers' home in this state"; and substituted "service men and women" for "such soldiers, sailors or marines."

CHAPTER 2—PUBLIC WELFARE ACT PART 1—TO ESTABLISH A STATE DEPARTMENT OF PUBLIC WELFARE AND COUNTY DEPARTMENTS OF PUBLIC WELFARE

Section 71-202. Appointment of state board—creation—salary.
71-203. Powers and duties of the state board.
71-206. Records to be maintained and reports rendered.
71-209. Powers and duties of the state administrator.
71-211. State department to act as agency of federal government—assistance to ward Indians.
71-216. Powers and duties of the county board.
71-217. Staff personnel—how selected, paid and controlled—dismissal.
71-222. Millage taxes to be levied—expenditures—budgets.
71-230. Method of issuing assistance grants—reimbursement.
71-241. Agreement for lien on real property of some recipients of public assistance.

71-202. Appointment of state board—creation—salary. (a) and (b). * * * [Same as parent volume.]

(c) The members of the state board shall take and subscribe to the constitutional oath of office.

(d). * * * [Same as parent volume.]

(e) Each member of the state board of public welfare shall receive twenty dollars ($20) per diem for each day actually spent in the performance of his duties and his actual necessary traveling and other expenses in going to, attending and returning from meetings of the board, and his actual and necessary traveling and other expenses incurred in the discharge of such duties as may be requested of him by a majority vote of the board, but in no event shall a member's per diem payments exceed twelve hundred fifty dollars ($1,250) in any one (1) year. No member of the state board shall have any direct financial interest in or profit by any of the operations of the state department of public welfare or any of its agencies.

Per diem and expenses of state board members shall, upon claims being presented according to state law, be paid out of funds appropriated to the state department of public welfare.

History: En. Sec. 2, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 26, L. 1953; amd. Sec. 1, Ch. 117, L. 1957; amd. Sec. 29, Ch. 177, L. 1965; amd. Sec. 1, Ch. 101, L. 1967.

Amendments

The 1965 amendment deleted from the end of subsection (c) a clause reading, "and shall furnish a surety company bond conditioned upon the faithful and proper discharge of their duties in the amount of five thousand dollars ($5,000.00) each, running to the state of Montana, the premium of which shall be paid by the state."

The 1967 amendment increased from $15 to $20 the daily per diem for members of the state board of public welfare, and increased from $1,000 to $1,250 the annual limitation in the first paragraph of subsection (e).

Repealing Clause

Section 2 of Ch. 101, Laws 1967 repealed all acts and parts of acts in conflict therewith.

71-203. **Powers and duties of the state board.** (1) In co-operation with the governor the state board shall select and appoint an administrative officer for the state department of public welfare who shall be known as the state administrator and who shall have such tenure of office, salary and administrative per diem and travel expense as the state board may establish, with the exception that the salary of said state administrator shall be in such amount as may be specified by the legislative assembly in the appropriation to the department of public welfare. If the legislative assembly does not specify the maximum salary of the administrator it shall be fixed by the state board of public welfare after approval by the board of examiners. Before approving any salary increase the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The state administrator shall be selected and appointed with due regard to the education, training and ability necessary in public welfare administration and organization and shall have been a resident of the state of Montana at least five (5) years prior to his appointment.

(2) Within six (6) months after the adoption and approval of this act it shall be the duty of the state board to establish and maintain minimum standards of service and personnel and to formulate salary schedules for the classified personnel, based upon training, experience and ability, for employees selected for positions in the state office of the state department and in county departments.

A merit system when practical but not later than one (1) year from and after the effective date of this act shall be established and maintained pertaining to qualifications for appointments, tenure of office, annual merit ratings, releases, promotions and salary schedules and the state board shall cause examinations to be held from time to time throughout the state for the purpose of establishing an available qualified list in order of merit of persons eligible for appointment. Personnel standards shall conform in so far as possible with general standards as established or required by the federal social security board.

History: En. Subd. (a) and (b), Sec. 3, Part 1, Ch. 82, L. 1937; amd. Sec. 30, Ch. 177, L. 1965; amd. Sec. 4, Ch. 237, L. 1967.

Amendments

The 1965 amendment deleted from subsection (1) a final sentence reading, "The state administrator shall be bonded in the sum of twenty-five thousand ($25,000.00) dollars, the premium of which will be paid by the state."

The 1967 amendment substituted "be in such amount * * * department of public welfare" for "not exceed five thousand ($5,000.00) dollars per year" at the end

of the first sentence of subsection (1); inserted the second and third sentences in subsection (1); and made minor style changes.

71-204. Authority of board—disclosure of certain information forbidden.

References

Cited in State ex rel. Lewis and Clark County v. State Board of Public Welfare, 141 M 209, 376 P 2d 1002, 1003.

71-206. Records to be maintained and reports rendered. The state department of public welfare shall maintain such records and render such reports as may be required by the federal board and such additional records and reports as shall be found necessary for state purposes or required by the state controller. County departments shall likewise be required to maintain such records and render such reports as the state board may require.

The fiscal rules and regulations of the United States government, as enjoined upon the states in respect to the Federal Social Security Act, shall be used by the state and county departments as a method of accounting for all joint federal state funds.

History: En. Subd. (e), Sec. 3, Part 1, Ch. 82, L. 1937; amd. Sec. 19, Ch. 249, L. 1967.

Amendments

The 1967 amendment substituted "controller" for "examiner" at the end of the first sentence of the first paragraph and deleted the second paragraph in the old section, which read, "All receipts of moneys, goods or property and all disbursements therefrom shall be subject to examination and audit by the state examiner."

71-209. Powers and duties of the state administrator. (a) The administrator shall be the executive and administrative officer of the state department of public welfare and shall act as secretary of the state board. Before each regular biennial meeting of the legislative assembly he shall prepare and submit to the state board of public welfare for its consideration budget estimates of all funds required to be appropriated by the legislative assembly for the operation of the department during the two next ensuing fiscal years as fiscal years are defined by section 59-701. These budget estimates shall contain all information necessary for their consideration. After these budget estimates have been considered by the state board of public welfare, the administrator shall submit these budget estimates to the state budget director with requests for appropriations.

After the close of the fiscal year in each even-numbered calendar year, the state administrator shall prepare a report to the governor of the state for the two preceding fiscal years, showing the operations of the department, furnishing information about all its principal activities giving the source and amounts of all funds received and the purposes for which they have been expended. It shall contain such statistical information and supplementary data as the administrator may deem pertinent or the governor may request. The report shall also contain such recommendations for legislation as experience may indicate to be desirable. The report shall be printed and submitted to the governor not later than October 15. The administrator shall prepare such interim reports as he may deem proper or the governor may require.

(b). * * * [Same as parent volume.]

History: En. Sec. 6, Part 1, Ch. 82, L. 1937; amd. Sec. 2, Ch. 129, L. 1939; subd. (b) amd. Sec. 2, Ch. 117, L. 1941; amd. Sec. 1, Ch. 255, L. 1965.

Amendment

The 1965 amendment deleted "but not later than November 1" after "considered by the state board of public welfare" in the last sentence of the first paragraph of subsection (a); substituted "state budget director" for "state board of examiners" near the end of the first paragraph of subsection (a); and deleted from the second paragraph of subsection (a) a former fourth sentence pertaining to the report for the period ending June 30, 1940.

71-211. State department to act as agency of federal government—assistance to ward Indians. The state department shall act as the agent of the federal government in public welfare matters of mutual concern in conformity with this act and the Federal Social Security Act, and in the administration of any federal funds granted to the state to aid in the purposes and functions of the state department.

The counties shall not be required to reimburse the state department for any portion of old-age assistance, medical assistance, aid to needy dependent children or aid to needy blind or aid to the totally disabled paid to ward Indians, further provided that the federal government may reimburse the state of Montana in behalf of counties, providing general relief to ward Indians, a sum in lieu of taxes which the counties would collect if the lands of such ward Indians were not in trust status. A ward Indian is hereby defined as an Indian who is living on an Indian reservation set aside for tribal use, or is a member of a tribe or nation accorded certain rights and privileges by treaty or by federal statutes. If and when the Federal Social Security Act is amended to define a "ward Indian," such definition shall supersede the foregoing definition.

History: En. Subd. (h), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 3, Ch. 129, L. 1939; amd. Sec. 1, Ch. 219, L. 1947; amd. Sec. 3, Ch. 199, L. 1951; amd. Sec. 1, Ch. 141, L. 1953; amd. Sec. 12, Ch. 212, L. 1965; amd. Sec. 17, Ch. 325, L. 1967.

Amendments

The 1965 amendment inserted "medical assistance for the aged" after "old-age assistance" near the beginning of the second paragraph; and inserted the words "The state department shall" in brackets at the beginning of the section.

The 1967 amendment corrected this section by adopting the phrase "The state department shall" at the beginning of this section; and, in the second paragraph, inserted "for" after "state department" and deleted "for the aged" after "medical assistance."

Separability Clause

Section 19 of Ch. 325, Laws 1967 read "Legislative intent. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If part of this act is invalid in one or more of its applications the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clauses

Section 18 of Ch. 325, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Section 20 of Ch. 325, Laws 1967 read "Sections 71-1501 through 71-1510, R. C. M. 1947, are repealed."

71-216. Powers and duties of the county board. The county board of public welfare shall be responsible for establishing local policies and such rules and regulations as are necessary to govern the county department and local administration of public welfare activities except that all such policies and rules and regulations must be in conformity with general policies and rules and regulations established by the state board. The

county board of public welfare shall review the determinations of eligibility and amount of payment to or on behalf of individuals made by the staff of the county department for conformity with the aforesaid rules and regulations. Determinations not in conformity will be referred to the staff by the county welfare board for appropriate action as authorized by said board.

History: En. Subd. (a), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 4, Ch. 199, L. 1951; amd. Sec. 13, Ch. 212, L. 1965.

Amendment

The 1965 amendment inserted "or on behalf of" after "amount of payment to" in the second sentence.

71-217. Staff personnel—how selected, paid and controlled—dismissal. Each county board shall select and appoint from a list of qualified persons furnished by the state department such staff personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the state department, may appoint some fully qualified person listed by the state department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the state department shall have the authority to supervise such county employees in respect to the efficient and proper performance of their duties. The county board of public welfare shall not dismiss any member of the staff personnel without the approval of the state department; but the state department shall have the authority to request the county board to dismiss any member of the staff personnel for inefficiency, incompetence or similar cause.

Public assistance staff personnel attached to the county board shall be paid from state public welfare funds, both their salaries and their actual and necessary traveling expenses, and their necessary subsistence expenses when away from the county seat in the performance of their duties; but the county board of public welfare shall reimburse the state department of public welfare, from county poor funds, one-half of the payments so made to its public assistance staff personnel, except that, under circumstances prescribed by the state department of public welfare, the reimbursement by the county board of public welfare may be less than one-half. All other administrative costs of the county department shall also be paid from county poor funds.

On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the state department of public welfare shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make such reimbursements within twenty (20) days after the presentation of the claim and the state department shall credit (add) all such reimbursements to its account for administrative costs.

History: En. Subd. (b), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 5, Ch. 129, L. 1939; amd. Sec. 1, Ch. 44, L. 1963.

Amendment

The 1963 amendment added, at the end of the first sentence in the second para-

graph, the clause permitting the state board to reduce reimbursements by county boards to less than one-half.

Repealing Clause

Section 2 of Ch. 44, Laws 1963 repealed all acts and parts of acts in conflict therewith.

71-222. Millage taxes to be levied—expenditures—budgets. It is hereby made the duty of the board of county commissioners in each county to levy seventeen (17) mills for the county poor fund as provided by law, or so much thereof as may be necessary. The board shall budget and expend so much of the funds in the county poor fund for all purposes of this act as will enable the county welfare department to pay the general relief activities of the county and to reimburse the state department of public welfare for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and its proportionate share of any other welfare activity that may be carried on jointly by the state and the county.

The amounts set up in the budget for the reimbursements to the state department shall be sufficient to make all of these reimbursements in full. The budget shall make separate provision for each one of these public assistance activities, and proper accounts shall be established for the funds for each and all of such activities.

As soon as the preliminary budget provided for in section 16-1903 has been agreed upon, a copy thereof shall without delay be mailed to the state administrator of public welfare, and it shall be his duty, at any time before the final adoption of the budget, to make such recommendations with regard to changes in any part of the budget relating to the county poor fund as is deemed necessary in order to enable the county to discharge its obligations under the Public Welfare Act.

The state administrator shall promptly examine the preliminary budget so submitted to him in order to ascertain if the amounts provided for reimbursements to the state department are likely to be sufficient, and shall notify the county clerk of his findings. It is hereby made the duty of the board to make such changes in the amounts provided for reimbursements, if any are required, that the county will be able to make the reimbursements in full.

The board of county commissioners shall not have the right to make any transfer from the amounts budgeted for reimbursing the state department without having first obtained a statement in writing from the state administrator of public welfare to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

No part of the county poor fund, irrespective of the source of any part thereof, shall be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance, or its proportionate share of any other welfare activity that may be carried on jointly by the state and the county; provided, however, that expenditures for improvement of any county buildings used directly for care of the poor may be made out of

any moneys in the county poor fund, whether such moneys are produced by seventeen (17) mill levy provided for in paragraph one (1) of this section or from any additional levy authorized or to be authorized by law. Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the state board of health, and, when such expenditure has been approved by the state public welfare department.

History: En. Subd. (b), Sec. 11, Part 1, Ch. 82, L. 1937; amd. Sec. 8, Ch. 129, L. 1939; amd. Sec. 3, Ch. 117, L. 1941; amd. Sec. 6, Ch. 199, L. 1951; amd. Sec. 1, Ch. 239, L. 1963; amd. Sec. 2, Ch. 69, L. 1967.

Amendments

The 1963 amendment added the proviso to the first sentence of the final paragraph and the entire second sentence of the final paragraph.

The 1967 amendment substituted "seventeen (17)" for "the per capita tax of two dollars ($2.00), and the six (6)" after "to levy" in the first paragraph; and substituted "seventeen (17)" for "the per capita tax or the six (6)" before "mill levy" in the last paragraph.

Repealing Clauses

Section 2 of Ch. 239, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Section 3 of Ch. 69, Laws 1967 repealed all acts and parts of acts in conflict therewith.

71-230. Method of issuing assistance grants—reimbursement. (a) Checks in payment of public assistance, as provided for in each part of this act, with the exception of general relief, shall be issued by the state department upon approved certificates of award and reports of changes of such eligible grantees as are forwarded by the county department to the state department and all such checks will be mailed to the individual recipient or the appropriate vendor. The checks in payment of public assistance shall be issued in the full approved amount for each eligible approved grantee and the original monthly payment shall be from the state public welfare accounts. All public assistance checks shall represent cash on demand at full par value to the recipient and vendor.

(b) On or before the twentieth of each month the state department will present a claim for reimbursement to each county department for its proportionate share of public assistance granted in the county to recipients during the month and for vendor medical payments made on behalf of recipients in the previous month. The county department must make such reimbursement to the state department within twenty (20) days after such claim is presented.

History: En. Sec. 19, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 71, L. 1957; amd. Sec. 14, Ch. 212, L. 1965.

Amendment

The 1965 amendment deleted "and with the exception of old-age assistance, aid to dependent children, aid to needy blind, and aid to the permanently and totally disabled payments made in behalf of such recipients for medical care" after "with the exception of general relief" in the first sentence of subsection (a); added "or the appropriate vendor" at the end of the first sentence of subsection (a); added "or vendor" at the end of subsection (a); inserted "to recipients" after "granted in the county" in the first sentence of subsection (b); added "and for vendor medical payments made on behalf of recipients in the previous month" at the end of the first sentence of subsection (b); and deleted former subsection (c), for text of which see parent volume.

71-241. Agreement for lien on real property of some recipients of public assistance. No application for a public assistance grant except

applications made pursuant to chapter 5, Title 71, Revised Codes of Montana, 1947, (aid to dependent children), chapter 3, Title 71, Revised Codes of Montana, 1947 (general relief), chapter 6, Title 71, Revised Codes of Montana, 1947, (aid to needy blind) and chapter 14, Title 71, Revised Codes of Montana, 1947, (services to the blind), and for vendor medical payments in behalf of individuals, shall be approved unless the applicant shall execute and deliver with such application an agreement, in such form as the state board of public welfare shall prescribe, acknowledging and agreeing that the amount of all assistance thereafter paid to the applicant, from whatever source such assistance may be derived, shall constitute an obligation and indebtedness of the applicant to the state and county which shall be secured by a lien upon all real property of the applicant then owned or acquired while a recipient of such assistance.

History: En. Sec. 1, Ch. 228, L. 1953; amd. Sec. 15, Ch. 212, L. 1965; amd. Sec. 1, Ch. 60, L. 1967.

Amendments

The 1965 amendment inserted "and for vendor medical payments in behalf of individuals" after the reference to chapter 3 of Title 71; and made a minor change in punctuation.

The 1967 amendment inserted "chapter 6, Title 71, Revised Codes of Montana, 1947, (aid to needy blind) and chapter 14, Title 71, Revised Codes of Montana, 1947, (services to the blind)" after "(general relief)" and made a minor change in phraseology.

CHAPTER 3—PUBLIC WELFARE ACT PART 2—GENERAL RELIEF—TO PROVIDE AID TO THE UNEMPLOYABLE, DESTITUTE AND THOSE MADE DESTITUTE THROUGH LACK OF EMPLOYMENT AND ALL THOSE IN NEED OF PUBLIC ASSISTANCE NOT ELIGIBLE OR OTHERWISE CARED FOR UNDER OTHER PARTS OF THIS ACT

Section 71-302. Eligibility requirements for general relief.
71-307. Relief by check or disbursing orders.
71-308. Medical aid and hospitalization.
71-309. Primary obligations of the board of county commissioners.

71-302. Eligibility requirements for general relief. An applicant to be eligible for general relief must have resided in the state of Montana for at least one (1) year immediately prior to the date of receipt of this assistance. Any person otherwise qualified who has resided in a county for one (1) year shall thereby acquire residence in that county, which residence shall be retained until residence is acquired in another county by residing there for one (1) year. If a person has resided in the state for one (1) year but does not have county residence, he shall make application for this assistance in the county in which he is residing, which county shall bear the cost of his assistance until he has acquired a county residence. If a person is absent from the state voluntarily he shall thereby be ineligible for general relief in the state of Montana. Time spent as a patient in a licensed nursing home or hospital, or a private charitable institution, shall not in any case be counted in determining the matter of county residence.

History: En. Subd. (a), Sec. 2, Part 2, Ch. 82, L. 1937; amd. Sec. 11, Ch. 129, L. 1939; amd. Sec. 4, Ch. 117, L. 1941; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 1, Ch. 99, L. 1963.

Amendment

The 1963 amendment added the last sentence.

71-307. Relief by check or disbursing orders. All relief disbursements by county departments of public welfare shall be by warrant or check; provided, however, that if the county welfare department finds that a recipient is in the habit of dissipating relief allowances instead of using them for the purposes intended, or that for any other reason it is better for the recipient and his family to receive the allowance through disbursing orders, then disbursing orders shall be used instead of cash payments; but all such disbursing orders must be written in such form that the goods and merchandise to be provided may be furnished by any regular dealer in such goods and merchandise within the county. It is further provided, however, that if the county has work available which a recipient of general relief is capable of performing, then the county department of public welfare may require the recipient to perform such work at the prevailing rate of wages paid by that county for similar work to be paid from the county poor fund in place of granting him general relief.

The county department of public welfare shall provide coverage under the Workmen's Compensation Act for those recipients of general relief working under the provisions hereof, and is authorized to enter into such agreements with the industrial accident board as may be necessary to carry out the provisions of this section.

Any recipient of general relief who is subject to the provisions of this section and who without cause refuses to perform work assigned to him as herein provided, shall lose his eligibility for general relief for a period of one (1) week for each refusal.

History: En. Sec. 5, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 129, L. 1939; amd. Sec. 1, Ch. 180, L. 1963.

Amendment

The 1963 amendment substituted "a recipient of" and "recipient" for "an applicant for" and "applicant" in the second sentence of the first paragraph; inserted "paid by that county for similar work" after "prevailing rate of wages" near the end of the first paragraph; and added the second and third paragraphs.

71-308. Medical aid and hospitalization. Medical aid and hospitalization for persons unable to provide such necessities for themselves are hereby declared to be the legal and financial duty and responsibility of the board of county commissioners, except as otherwise provided in other parts of this act, payable from the county poor fund. It shall be the duty of the board of county commissioners to make provisions for competent and skilled medical or surgical services as approved by the state board of health or the state medical association, or in the case of osteopathic practitioners by the state osteopathic association or chiropractors by the state chiropractic association, or optometrical services as approved by the Montana optometric association, and dental services as approved by the dental association. "Medical" or "medicine" as used in this act refers to the healing art as practiced by licensed practitioners.

In automobile accident cases wherein transients traveling through the state of Montana are injured, medical aid and hospitalization shall be paid for by the county wherein the accident occurred and the department of public welfare shall reimburse such county in full upon proper claim being made to the department of public welfare; provided, further, that in all other accident cases wherein such transients are injured, medical aid

and hospitalization shall be paid for by the county wherein the accident occurred and the department of public welfare shall reimburse such county for one-half of such medical aid and hospitalization paid by such county, upon proper claim being made to the department of public welfare.

The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by the physicians appointed by such board who shall be known as county physicians or deputy county physicians, and may fix a rate of compensation for the furnishing of such medical attendance.

The board of county commissioners shall have the responsibility of making suitable arrangements to provide respectable burial for those for whom such expenses are not otherwise available.

History: En. Sec. 6, Part 2, Ch. 82, L. 1937; amd. Sec. 15, Ch. 129, L. 1939; amd. Sec. 5, Ch. 117, L. 1941; amd. Sec. 1, Ch. 155, L. 1947; amd. Sec. 9, Ch. 199, L. 1951; amd. Sec. 1, Ch. 57, L. 1955; amd. Sec. 1, Ch. 86, L. 1957; amd. Sec. 16, Ch. 212, L. 1965.

Amendment

The 1965 amendment inserted "except as otherwise provided in other parts of this act" near the end of the first sentence of the first paragraph.

Wandering Child

County properly brought mandamus action to compel state board of public welfare to reimburse it for medical and hospital expenses for a wandering thirteen-year-old child from another state who roamed from place to place for approximately one month, without means of support, when she threw herself in front of a moving automobile and sustained the injuries for which the county paid the expenses. State ex rel. Lewis and Clark County v. State Board of Public Welfare, 141 M 209, 376 P 2d 1002, 1004.

71-309. Primary obligations of the board of county commissioners. Except as otherwise provided in other parts of this act, it is hereby declared to be the primary legal duty and financial obligation of the board of county commissioners to make such tax levies and to establish such budgets in the county poor fund as provided by law and as are necessary to provide adequate institutional care for all such indigent residents as are in need of institutional care and to make such tax levies and establish such budgets in the county poor fund as are necessary to make provisions for medical aid and services and hospitalization for all indigent county residents. All such public assistance and services shall be charges against and payable from the county poor fund.

History: En. Sec. 7, Part 2, Ch. 82, L. 1937; amd. Sec. 6, Ch. 117, L. 1941; amd. Sec. 10, Ch. 199, L. 1951; amd. Sec. 17, Ch. 212, L. 1965.

Amendment

The 1965 amendment inserted "Except as otherwise provided in other parts of this act" at the beginning of the section.

CHAPTER 4—PUBLIC WELFARE ACT PART 3—TO PROVIDE FOR OLD-AGE ASSISTANCE TO AGED PERSONS IN NEED IN CONFORMITY WITH TITLE 2 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED

Section 71-402. Eligibility requirements for old-age assistance.
71-405. County share of participation.
71-406. Investigation of applications.

71-402. Eligibility requirements for old-age assistance. Old-age assistance shall be granted any person who:

(a) to (e). * * * [Same as parent volume.]

(f) Has not made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this act at any time within five (5) years immediately prior to the filing of application for assistance pursuant to the provisions of this act;

(g) Is not receiving aid to dependent children, aid to needy blind or aid to the permanently and totally disabled, or medical aid for the aged, for himself or herself.

History: En. Sec. 2, Part 3, Ch. 82, L. 1937; Subd. (g) rep. Sec. 9, Ch. 213, L. 1943; amd. Sec. 15, Ch. 199, L. 1951; amd. Sec. 18, Ch. 212, L. 1965.

Amendment

The 1965 amendment increased the period specified in paragraph (f) from two to five years; and inserted "or medical aid for the aged" near the end of paragraph (g).

71-405. **County share of participation.** Each county department shall reimburse the state department in the amount of one-third (1/3) of the approved old-age assistance grants paid by the state department to persons in the county each month, exclusive of the federal share. Each county department shall reimburse the state department in the amount of one-half (½) of the approved old-age assistance vendor medical payments on behalf of persons in the county each month, exclusive of the federal share. Such reimbursements shall be credited to the old-age assistance account of the state department.

History: En. Sec. 5, Part 3, Ch. 82, L. 1937; amd. Sec. 1, Ch. 69, L. 1947; amd. Sec. 1, Ch. 155, L. 1949; amd. Sec. 18, Ch. 199, L. 1951; amd. Sec. 3, Ch. 71, L. 1957; amd. Sec. 1, Ch. 5, L. 1961; amd. Sec. 19, Ch. 212, L. 1965.

Amendment

The 1965 amendment inserted the second sentence.

71-406. **Investigation of applications.** Whenever a county public welfare department receives an application for an old-age assistance grant or for medical care on behalf of an old-age assistance recipient, an investigation shall be promptly made. The investigation of each applicant for old-age assistance shall be conducted by the county board through a staff worker of the county department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of information secured with regard to his circumstances. Upon completion of such investigation the county welfare board shall determine whether the applicant is eligible for and should receive a grant, the amount of the assistance and the date on which assistance shall begin. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application.

History: En. Sec. 6, Part 3, Ch. 82, L. 1937; amd. Sec. 19, Ch. 199, L. 1951; amd. Sec. 20, Ch. 212, L. 1965.

Amendment

The 1965 amendment inserted "or for medical care on behalf of an old-age assistance recipient" in the first sentence.

CHAPTER 5—PUBLIC WELFARE ACT PART 4—TO PROVIDE FOR AID TO NEEDY DEPENDENT CHILDREN IN CONFORMITY WITH PART 4 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED

Section 71-501. "Dependent child" defined.

71-501. "Dependent child" defined. The term "dependent child" means a child (A) under the age of eighteen (18), or (B) under the age of twenty-one (21) who is a student under the regulations prescribed by the state welfare department and such children (A and B above) who have been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, nephew, niece, or first cousin, in a place of residence maintained by one or more of such relatives as his or their own home.

Aid to dependent children shall not be denied to or for the care of children who would otherwise be entitled to such aid under the laws of the state of Montana by the fact that such child is living in the home of his or her father, who is in the opinion of the county board of public welfare of the appropriate county unemployable nor by the fact that such child is living in the home of a head of a household who is, at the time, receiving job training under the laws of the state of Montana; nor shall the benefits which would otherwise accrue to such child for aid to dependent children under the laws of the state of Montana be reduced by reason of either such cause.

History: En. Subd. (a) Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965.

Amendment

The 1965 amendment inserted the designation for clause (A); inserted clause (B) and the words "and such children (A and B)"; added the second paragraph; and made a minor grammatical change.

Effective Date

Section 3 of Ch. 255, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

CHAPTER 9—PUBLIC WELFARE ACT PART 8—APPROPRIATIONS, DISPOSITION OF FUNDS AND DISBURSEMENTS

Section 71-901. **Receipt of funds.**

71-901. Receipt of funds. The treasurer of the state of Montana is hereby designated as the appropriate fiscal officer of the state to receive federal funds. All money appropriated by the legislature for public welfare purposes, all money received from the United States government for public welfare purposes, and all money received from any other source for the purposes set forth in the Public Welfare Act shall be paid into the state treasury to the credit of the state department of public welfare.

History: En. Sec. 1, Part 8, Ch. 82, L. 1937; amd. Sec. 210, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "to the credit of the state department of public welfare" for "and constitute a special fund to be designated as the public welfare fund" at the end of the section.

CHAPTER 10—PUBLIC WELFARE ACT PART 9—TO PROVIDE FOR PAYMENTS TO PERSONS HAVING SILICOSIS

Section 71-1003. Eligibility requirements for aid to persons having silicosis, as herein defined.
71-1004. Amounts of payments.
71-1008. Conformity with acts of federal government.

71-1003. Eligibility requirements for aid to persons having silicosis, as herein defined. Payments shall be made under this act to any person who:

(a) Has silicosis, as defined in section 71-1001 of the Revised Codes of Montana, 1947, which results in his total disability so as to prevent him from engaging in a gainful occupation. The term "gainful occupation" as used herein shall not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential, but shall mean any person having an income from any other source exceeding one hundred fifty dollars ($150.00) per month.

(b) and (c). * * * [Same as parent volume.]

(d) Is not receiving, with respect to any month for which he would receive a payment under this act, compensation under the Workmen's Compensation Act of the state of Montana, as provided by chapter 155, Laws of 1959, which will equal the sum of one hundred twenty-five dollars ($125.00) hereunder. If he is receiving payments under the Workmen's Compensation Act, as provided by chapter 155, Laws of 1959, which is less in the aggregate than one hundred twenty-five dollars ($125.00), then he is entitled to a payment under this act of the difference between the amount received under the Workmen's Compensation Act, as provided in chapter 155, Laws of 1959, and one hundred twenty-five dollars ($125.00) per month.

History: Sec. 3, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967.

Amendments

The 1965 amendment increased the monthly amounts specified in paragraph (d) from $75 to $90.

The 1967 amendment inserted "of the Revised Codes of Montana, 1947" after "section 71-1001" in subsection (a) and increased the monthly amounts specified in paragraph (d) from $90 to $125.

71-1004. Amounts of payments. Subject to the provisions of this act and the deductions herein provided, any person who has silicosis, as defined in this chapter, and who has, subject to the regulations and standards of the industrial accident board; been determined by the industrial accident board to be entitled to a payment under this chapter for silicosis, shall be granted a payment by the said industrial accident board of one hundred twenty-five dollars ($125.00) per month subject to such appropriations as may from time to time be made. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein.

History: Sec. 4, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 216, L. 1947; amd. Sec. 2, Ch. 192, L. 1949; amd. Sec. 1, Ch. 204, L. 1953; amd. Sec. 2, Ch. 252, L. 1955; amd. Sec. 1, Ch. 248, L. 1959; amd. Sec. 4, Ch. 225, L. 1961; amd. Sec. 2, Ch. 267, L. 1965; amd. Sec. 2, Ch. 125, L. 1967.

Amendments

The 1965 amendment increased the monthly payment specified in the first sentence from $75 to $90.

The 1967 amendment increased the monthly payment specified in the first sentence from $90 to $125.

71-1008. Conformity with acts of federal government. If and when the government of the United States makes grants to states in aid of and

allowing payments to persons having silicosis, as herein defined, the industrial accident board of the state of Montana is hereby authorized to administer in the state of Montana such grants-in-aid and payments in addition to grants made by this act. The total payments to any individual under this act shall not exceed one hundred twenty-five dollars ($125.00) per month exclusive of any grants made by Congress.

History: Sec. 8, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 3, Ch. 216, L. 1947; amd. Sec. 3, Ch. 192, L. 1949; amd. Sec. 2, Ch. 204, L. 1953; amd. Sec. 3, Ch. 252, L. 1955; amd. Sec. 2, Ch. 3, L. 1961; amd. Sec. 8, Ch. 225, L. 1961; amd. Sec. 3, Ch. 267, L. 1965; amd. Sec. 3, Ch. 125, L. 1967.

Amendments

The 1965 amendment increased the maximum monthly payment specified in the final sentence from $75 to $90.

The 1967 amendment increased the maximum monthly payment specified in the final sentence from $90 to $125 per month.

Repealing Clauses

Section 4 of Ch. 267, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Section 4 of Ch. 125, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 15—MEDICAL ASSISTANCE

Section 71-1511. Provisions for administration.
71-1512. Services included in medical assistance.
71-1513. State department to consult with council appointed by governor—composition of council.
71-1514. Freedom of doctors to treat recipients of medical assistance—freedom of selection of doctor.
71-1515. Contracting with other agencies to process claims.
71-1516. Eligibility requirements for medical assistance.
71-1517. Amount, scope and duration of assistance.
71-1518. Application for assistance.
71-1519. County share of participation.
71-1520. Investigation and determination of eligibility.
71-1521. Redetermination of eligibility.
71-1522. Change of residence of person receiving medical assistance.
71-1523. Confidential records.
71-1524. Exclusion of lien.
71-1525. Relative's responsibility.
71-1526. Discrimination prohibited.

71-1501 to 71-1510. Repealed.

Repeal

These sections (Secs. 1 to 10, Ch. 212, L. 1965), relating to medical aid for the aged, were repealed by Sec. 20, Ch. 325, Laws 1967.

71-1511. Provisions for administration. (1) The state department of public welfare (hereinafter called "state department") is hereby authorized and empowered to administer and supervise a vendor payment program of medical assistance, under the powers, duties, and functions provided in sections 71-201 through 71-232, R.C.M. 1947, as amended and as contemplated by the provisions of Title XIX of the Federal Social Security Act.

(2) The county department of public welfare shall be charged with the local administration and supervision of medical assistance, subject to the powers, duties and functions prescribed for the county department in sections 71-201 through 71-232, R.C.M. 1947.

(3) It is hereby mandatory and required that the state plan and operation of medical assistance shall be in effect in each and every county of the state and the administration and supervision of medical assistance shall be uniform throughout the several counties of the state.

(4) The state department of public welfare shall have printed and distribute copies of this act to all county welfare departments and shall prescribe the form of and print and supply to the county welfare departments blanks of applications, reports and such other forms as may be necessary in relation to medical assistance.

(5) All rules and regulations of the state department of public welfare made under this act shall be binding upon the county departments of public welfare.

(6) The state department shall adopt appropriate rules and regulations, not inconsistent with this act, to administer and supervise the said program uniformly throughout the state and shall define by rules and regulations medical assistance. Medical assistance shall be furnished through payments to providers of services and supplies as contemplated in this act.

History: En. Sec. 1, Ch. 325, L. 1967.

Compiler's Notes

Title XIX of the Social Security Act, referred to in this section, is compiled in the United States Code as Tit. 42, secs. 1396 to 1396d.

Title of Act

An act to provide for medical assistance in conformity with Title XIX of the Federal Social Security Act of 1935 as amended; providing for the administration of the act by the state department of public welfare and the county departments of public welfare; providing eligibility requirements for assistance under the act; and providing for counties' share of participation under the act; amending section 71-211, R. C. M. 1947, to conform herewith; and repealing sections 71-1501 through 71-1510, R. C. M. 1947.

71-1512. Services included in medical assistance. The definition of medical assistance shall include:

(a) Inpatient hospital services (other than services in a public institution for tuberculosis or mental diseases);

(b) Outpatient hospital services;

(c) Other laboratory and X-ray services;

(d) Skilled nursing home services (other than services in a public institution for tuberculosis or mental diseases);

(e) Physicians' services, whether furnished in the office, the patient's home, a hospital, a skilled nursing home or elsewhere.

It may also include, although not necessarily limited to the following:

(a) Medical care, or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) Home health care services;

(c) Private duty nursing services;

(d) Dental services;

(e) Physical therapy and other related services;

(f) Clinic services;

(g) Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(h) Other diagnostic, screening, preventive, rehabilitative, chiropractic and osteopathic services;

(i) Any additional medical service or aid allowable under or provided by the Federal Social Security Act.

The foregoing services shall be provided to the fullest extent that moneys appropriated, collected, accumulated or matched from any source by the state department will allow. Priorities of the foregoing items and amounts of medical assistance, if funds are inadequate, shall be determined by the state department. The state department shall establish standards of assistance.

History: En. Sec. 2, Ch. 325, L. 1967.

Compiler's Notes

The Social Security Act, referred to in this section, is compiled in the United States Code as Tit. 42.

71-1513. State department to consult with council appointed by governor—composition of council. The state department shall advise and consult at least semiannually with a council composed of not less than nine members, to be appointed by the governor and to serve three year overlapping terms. The first appointed council shall draw lots to determine which members will serve three years, which two years, and which one year. The following associations, to wit: (1) the Montana Medical Association, (2) the Montana State Dental Association, (3) the Montana Hospital Association, (4) the Montana State Pharmaceutical Association, (5) the Montana Nursing Home Association, (6) the Montana Association of County Commissioners, (7) the Montana Nurses Association, and (8) the Montana Optometry Association shall be requested to recommend not less than one member for appointment to such council in order that there be adequate representation of interested professional and official groups. As vacancies occur, the organization recommending the individual whose position is expiring will be requested to submit a recommendation for filling the position. The ninth member of such additional members as the governor may elect to appoint as representative of consumer interests. The following shall serve ex officio as members of the council: (a) executive director of the state board of health, (b) the administrator of the state department of public welfare, as chairman. Members shall be reimbursed for travel and actual expenses while in performance of their duties, not to exceed that allowed to nonelective state officials.

History: En. Sec. 3, Ch. 325, L. 1967.

71-1514. Freedom of doctors to treat recipients of medical assistance—freedom of selection of doctor. The state department shall provide for professional freedom of those licensed practitioners who provide medical assistance under this act, and provide reasonable freedom of choice to recipients of medical aid to select the vendor or provider of medical care, services or prescribed drugs.

History: En. Sec. 4, Ch. 325, L. 1967.

71-1515. Contracting with other agencies to process claims. The state department may, by suitable rules and regulations, provide for contracting

with any state or private agency for processing and payment of claims under such program of medical assistance, and the state welfare board shall have the authority to contract with one or more private or state agencies to provide any or all of the enumerated medical services.

History: En. Sec. 5, Ch. 325, L. 1967.

71-1516. Eligibility requirements for medical assistance. Medical assistance shall be granted in behalf of all persons who reside in the state of Montana, including residents temporarily absent from the state and who meet any of the following requirements:

(1) Who receive all or part of their income from the federally aided public assistance programs: old-age assistance, aid to the blind, aid to dependent children, and aid to the permanently and totally disabled;

(2) All persons, who upon application, would be eligible for financial assistance under any one of the federally aided programs referred to above;

(3) All persons who would be entitled to financial assistance under one of the federally aided categories except that they do not meet the durational residence requirements or relative responsibility requirements of any of the public assistance programs above enumerated;

(4) Persons in medical institutions (except public institutions for tuberculosis or mental illness) who, if they were no longer in such institution, would be eligible for financial assistance under one of the above programs;

(5) All children under twenty-one who meet the conditions of eligibility in the state's plan for aid to dependent children, other than with respect to school attendance;

(6) All children under twenty-one who are in foster care under the supervision of the state department (except children in public institutions).

History: En. Sec. 6, Ch. 325, L. 1967.

71-1517. Amount, scope and duration of assistance. The amount, scope, and duration of medical assistance granted eligible persons shall be determined by the state department.

History: En. Sec. 7, Ch. 325, L. 1967.

71-1518. Application for assistance. Application for assistance under this part shall be made to the county office of the county department in the county in which the person is residing. The application shall be presented in the manner on the form prescribed by the state department. All individuals wishing to apply shall have the opportunity to do so.

History: En. Sec. 8, Ch. 325, L. 1967.

71-1519. County share of participation. Each county department shall reimburse the state department in the amount of one-half (½) of the approved medical payments paid by the state department in behalf of persons in the county each month, exclusive of the federal share. Such reimbursements shall be credited to the medical assistance account of the state department.

History: En. Sec. 9, Ch. 325, L. 1967.

71-1520. Investigation and determination of eligibility. The county department shall promptly investigate and determine the eligibility of each applicant under this act in accordance with the rules and regulations of the state department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of the information given. The county department shall determine whether or not the applicant is eligible for assistance under this act, and aid shall be furnished promptly to eligible persons. The county public welfare board shall review the determination of the eligibility or noneligibility made by the county department. Each applicant shall receive written notice of the decision concerning his application and right of appeal shall be secured to the applicant under the procedures of section 71-223, R.C.M. 1947.

History: En. Sec. 10, Ch. 325, L. 1967.

71-1521. Redetermination of eligibility. All medical assistance cases approved under this part shall be reviewed as often as shall be required under the rules and regulations of the state department.

History: En. Sec. 11, Ch. 325, L. 1967.

71-1522. Change of residence of person receiving medical assistance. A recipient who moves his residence to another county in this state shall continue to receive assistance under the rules and regulations of the state department. The county from which he has moved shall be charged by the state department for such county share of his assistance for a period of one (1) year after which time the county to which he has moved shall be charged therefor. The state department will determine the date of transfer. The county from which a recipient moves shall notify the state department and the county to which the recipient moves.

History: En. Sec. 12, Ch. 325, L. 1967.

71-1523. Confidential records. All applications, information and records concerning any applicant or recipient of medical assistance under the provisions of this act shall be confidential and shall not be disclosed nor used for any purpose not directly connected with the administration of medical assistance. The violation of this provision is hereby made a misdemeanor and is punishable as such.

History: En. Sec. 13, Ch. 325, L. 1967.

71-1524. Exclusion of lien. No applicant hereunder shall be required to execute an agreement for lien on his real property. No lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual). There shall be no adjustment or recovery (except, in the case of an individual who was sixty-five (65) years of age or older when he received such assistance, from his estate, and then only after the death of his surviving spouse, if any, and only at a time when he has no surviving child who is under age twenty-one (21) or is blind or permanently and totally disabled) of any medical assistance

correctly paid on behalf of such individual. Recoveries shall be prorated to the federal government and the county involved in the proportion to which each contributed to the medical assistance.

History: En. Sec. 14, Ch. 325, L. 1967.

71-1525. Relative's responsibility. The provisions of other parts of Title 71, R.C.M. 1947, as amended, notwithstanding, the only relatives that can be held responsible for payment of medical assistance under the program are the husband or wife of the individual, the parents of children under age twenty-one (21), and the parents of blind or disabled persons over age twenty-one (21).

History: En. Sec. 15, Ch. 325, L. 1967.

71-1526. Discrimination prohibited. No discrimination shall be practiced or asserted against any applicant for or recipient of care and services under this act, on the basis of race, color, or national origin; and the furnishing of care and services under this act to any applicant or recipient thereof shall not be delayed or denied on the basis of race, color, or national origin.

History: En. Sec. 16, Ch. 325, L. 1967.

CHAPTER 16—ECONOMIC OPPORTUNITY AND POVERTY RELIEF

Section 71-1601. Purpose and intent of act.
71-1602. Agreements with federal agencies authorized.
71-1603. Expenditure of public funds to carry out agreements.
71-1604. City-county commission authorized—powers.

71-1601. Purpose and intent of act. It is the purpose of this act to enable the state of Montana, and the counties, cities, towns, school districts and other governmental subdivisions of the state, and other organizations or agencies authorized to receive federal assistance under Public Law 88-452, 88th Congress, to secure for the citizens of Montana the benefits offered by the United States government to the several states and their citizens in the law of August 20, 1964 (Public Law 88-452 of the 88th Congress; 78 Stats. 508) for economic betterment and the relief of poverty. It is the intent of this act to grant to the state and its subdivisions the widest possible authority, within the limits set by law, to co-operate and combine their efforts with those of the appropriate federal agencies, and to comply with any federal regulations, not in conflict with the laws of the state of Montana, to carry out the purposes of the congressional act and secure the resulting benefits for Montana and its people.

History: En. Sec. 1, Ch. 263, L. 1965.

Compiler's Note

Public Law 88-452 of the 88th Congress may be found at 42 U. S. Code 2711 to 2981.

Title of Act

An act to authorize and empower counties, cities, towns, school districts or other municipal subdivisions of the state of Montana, and agencies, departments, offices and divisions of the state government, and other agencies authorized to receive federal assistance under Public Law 88-452, 88th Congress, individually or in combination, to enter into and carry out contracts, agreements and plans with agencies and departments of the United States government and to expend moneys to implement and secure the benefits of Public Law 88-452 of the 88th Congress, enacted August 20, 1964 (78 Statute 508), known as the "Economic Opportunity Act of 1964."

71-1602. Agreements with federal agencies authorized. The state of Montana, and all offices, agencies, departments and divisions thereof, and all counties, cities, towns, school districts and other governmental subdivisions of the state, and other organizations or agencies authorized to receive federal assistance under Public Law 88-452, 88th Congress, singly or in combination, are hereby authorized and empowered, within the limits set by the respective laws governing them, to enter into and carry out contracts, agreements and plans with any authorized agency of the United States government for the implementation and operation within the areas of their respective jurisdictions of the act of Congress of August 20, 1964 (Public Law 88-452 of the 88th Congress; 78 Stats. 508).

History: En. Sec. 2, Ch. 263, L. 1965.

71-1603. Expenditure of public funds to carry out agreements. The agencies of the state and local government enumerated in the preceding section may, within the limits of the laws governing their respective authorities to raise and expend public moneys, budget for, and/or expend public moneys in order to enter into and carry out contracts, agreements and plans under this act and Public Law 88-452. Any such expenditures must be made from the budgets, budget items or appropriations set up for the general purpose to be served by the project.

History: En. Sec. 3, Ch. 263, L. 1965.

71-1604. City-county commission authorized—powers. The city council or councils of a city or cities within a county and the county commissioners of the county may create a city-county commission to effect the purposes of this act. Such city-county commission is authorized to:

(1) Make contracts and agreements with United States government agencies for the purpose of carrying out the intent of this act;

(2) Accept and expend public and private funds made available to such commission for the purpose of carrying out the intent of this act.

History: En. Sec. 4, Ch. 263, L. 1965.

Effective Date

Section 5 of Ch. 263, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

TITLE 72—RAILROADS

Chapter 1. Railroads—regulation by board of railroad commissioners, 72-102.
2. Railroad companies—general powers and duties, 72-211, 72-224.

CHAPTER 1—RAILROADS—REGULATION BY BOARD OF RAILROAD COMMISSIONERS

Section 72-102. Oath.

72-102. (3780) **Oath.** Each member of said board, and each person appointed to office by said board, before entering upon the duties of his office, shall take and subscribe the oath specified in section 1, article XIX, of the constitution of the state of Montana, and such oath shall be filed in the office of the secretary of state.

History: En. Sec. 2, Ch. 37, L. 1907; re-en. Sec. 4364, Rev. C. 1907; re-en. Sec. 3780, R. C. M. 1921; amd. Sec. 31, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted second and third sentences reading, "The members of said board shall each give a bond to the state in the sum of five thousand dollars, with sureties to be approved by the governor, conditioned for the faithful discharge of the duties of their respective offices. The secretary of the board shall give a like bond in the sum of one thousand dollars."

72-106. (3784) Repealed.

Repeal

This section (Sec. 6, Ch. 37, L. 1907), relating to salaries of the commissioners, the secretary, and the stenographer, was repealed by Sec. 1, Ch. 129, Laws 1963, and by Sec. 3, Ch. 212, Laws 1963.

72-108 to 72-110. (3786 to 3788) Repealed.

Repeal

These sections (Secs. 1 to 3, Ch. 109, L. 1919; Sec. 1, Ch. 90, L. 1927), relating to salaries of employees of the board, were repealed by Sec. 1, Ch. 129, Laws 1963.

72-117. (3795) Making schedules effective.

Publication and Notice

The board of railroad commissioners is not required, when acting upon a petition or application for reduced rail rates, to cause publication and to give notice pursuant to this section and section 72-118, in advance of any action on such petition or prior to issuance of any authorization thereon. State ex rel. Montana Motor Tariff Bureau, Inc. v. Smith, 144 M 110, 394 P 2d 758, 760.

72-118. (3796) Power to alter classification or rate, etc.

Publication and Notice

The requirement of this section for publication and notice obtains only in the event the board of railroad commissioners makes or establishes any increase or raise in rate of charge for the transportation of freight. State ex rel. Montana Motor Tariff Bureau, Inc. v. Smith, 144 M 110, 394 P 2d 758, 760.

The board of railroad commissioners is not required, when acting upon a petition or application for reduced rail rates, to cause publication and to give notice pursuant to this section and section 72-117, in advance of any action on such petition or prior to issuance of any authorization thereon. State ex rel. Montana Motor Tariff Bureau, Inc. v. Smith, 144 M 110, 394 P 2d 758, 760.

72-144. (3821) Repealed.

Repeal

This section (Sec. 1, Ch. 2, L. 1917), relating to rates for the transportation of prisoners, was repealed by Sec. 101, Ch. 199, Laws 1965.

72-164. (3842) Railroad commission may order electric signal, etc.

Contributory Negligence

Knowledge or lack of knowledge of a custom to warn, or of the fact that customary protective signals have been abandoned or are not in operating condition, has an important bearing on the question of contributory negligence, but it does not affect the question of primary negligence. Hernandez v. Chicago, Burlington & Quincy R. Co., 144 M 585, 398 P 2d 953.

Railroad was not liable for death of plaintiff's son, even though it had failed to put out fusees at time when car struck the train, since driver's view of the crossing was unobstructed, reflector signs warning of crossing were in well-kept condition, and there were no other extrahazardous conditions. Hernandez v. Chicago, Burlington & Quincy R. Co., 144 M 585, 398 P 2d 953.

Does Not Absolve Motorist from Using Reasonable Care

A railroad crossing is as a matter of law a place of known danger and one is bound by law to recognize it as such. Hernandez v. Chicago, Burlington & Quincy R. Co., 144 M 585, 398 P 2d 953.

Duty of Driver to Stop

A railroad has a right to expect motorists to approach a railroad crossing with caution and it is not bound to protect against the negligence of a motorist. Hernandez v. Chicago, Burlington & Quincy R. Co., 144 M 585, 398 P 2d 953.

Duty of Guest of Driver

The negligence of a driver in failing to stop at a railroad crossing, as required by this section, cannot be imputed to his passenger. Hernandez v. Chicago, Burlington & Quincy R. Co., 144 M 585, 398 P 2d 953.

Hazardous Conditions

The number of automobiles passing over a railroad crossing will not, of itself, make a crossing extrahazardous. Hernandez v. Chicago, Burlington & Quincy R. Co., 144 M 585, 398 P 2d 953.

Dark-colored road surfaces which tend to absorb the lights of an automobile do not make a railroad crossing extrahazardous. Hernandez v. Chicago, Burlington & Quincy R. Co., 144 M 585, 398 P 2d 953.

A railroad cannot make a crossing which is not extrahazardous, extrahazardous simply by putting out fusees. Hernandez v. Chicago, Burlington & Quincy R. Co., 144 M 585, 398 P 2d 953.

Railroad's Duty

At an ordinary crossing where a train has stopped on the crossing or is moving slowly over it, it is not negligence on the part of the railroad company if it fails to blow a whistle, ring a bell, place warning lights along the train or to provide a flagman to warn the traffic. Hernandez v. Chicago, Burlington & Quincy R. Co., 144 M 585, 398 P 2d 953.

The infrequent use of a railroad crossing may affect the degree of care required to be taken by the train in approaching the crossing, but when the train is on the crossing, this is, in itself, a sufficient warning of danger to the traveling public. Hernandez v. Chicago, Burlington & Quincy R. Co., 144 M 585, 398 P 2d 953.

References

Hannigan v. Northern Pacific Ry. Co., 142 M 335, 384 P 2d 493; Sztaba v. Great Northern Ry. Co., — M —, 411 P 2d 379.

CHAPTER 2—RAILROAD COMPANIES—GENERAL POWERS AND DUTIES

Section 72-211. May borrow money and secure payment.
72-224. May issue and secure bonds.

72-205. (6507) Powers of railroad corporations.

Subd. 5, Obstruction of Watercourses

Railroad, which quitclaimed land including right of way across irrigation ditch, was not relieved of its statutory duty to maintain the cement drop, siphon and wooden flume for the benefit of lower landowners who depended on the water. Harrer v. Northern Pacific Ry. Co., — M —, 410 P 2d 713.

72-211. (6513) May borrow money and secure payment. Any corporation organized under this chapter shall have power to borrow money on

the credit of the corporation to an amount not exceeding its authorized capital stock, at a rate of interest to be agreed upon by the respective parties, and may execute bonds therefor in sum of not less than one hundred dollars, and secure the payment thereof by mortgage or pledge of the property and income of such corporation. [Effective January 1, 1965.]

History: En. Sec. 14, p. 102, Ex. L. 1873; re-en. Sec. 312, 5th Div. Rev. Stat. 1879; re-en. Sec. 691, 5th Div. Comp. Stat. 1887; re-en. Sec. 899, Civ. C. 1895; re-en. Sec. 4280, Rev. C. 1907; re-en. Sec. 6513, R. C. M. 1921; amd. Sec. 11-148, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted a second sentence reading, "And if the said mortgage shall so provide, it shall be and remain a valid lien upon all of the property of said corporation of whatever kind then existing, or that may thereafter be by it acquired, irrespective of the law now in force relating to chattel mortgages, and the same shall be taken, held, and enforced in the same manner as mortgages upon real estate now are held and enforced"; and made a minor change in phraseology.

72-219. (6521) **Penalties—exorbitant and discriminatory rates, etc.**

References

Sztaba v. Great Northern Ry. Co. — M —, 411 P 2d 379.

72-224. (6526) **May issue and secure bonds.** Any railroad corporation whose line is wholly or partly within this state, whether chartered by or organized under the law of the state or territory of Montana, or of the United States, or of any other state or territory, shall have authority and power to make, issue, negotiate, and deliver its bonds, securities, or obligations to such amount, not exceeding its authorized capital stock, bearing such rate of interest and payable at such time or times as its board of directors shall determine, and may negotiate, sell, pledge, or otherwise dispose of the same at such price, and on such terms, and in such manner as its board of directors may authorize or determine; and to secure the payment of all or any of such bonds, securities, or obligations, and the interest thereon, may make, execute, and deliver such mortgages or deeds of trust upon all or any part of its property, income, and franchises, as the board of directors may determine or direct. [Effective January 1, 1965.]

History: En. Sec. 706, 5th Div. Comp. Stat. 1887; re-en. Sec. 913, Civ. C. 1895; re-en. Sec. 4294, Rev. C. 1907; re-en. Sec. 6526, R. C. M. 1921; amd. Sec. 11-149, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted from the end of the section clauses reading, "and if any such mortgage or deed of trust shall so provide, and to the extent it shall provide, it shall be and remain a valid lien upon the property, rights, and franchises of the corporation of whatever nature or kind afterwards acquired, as well as upon property, rights, and franchises owned or possessed by the corporation at the time of its execution, irrespective of the law relating to chattel mortgages, and any such mortgage or deed of trust shall be taken, held, and enforced in the same manner as mortgages of real estate; and the record thereof in the office of the secretary of state shall be notice of its existence and contents to all persons, without any further record thereof, and it shall be the duty of the secretary to record in his office any such mortgage or deed of trust, when presented for that purpose"; and made minor changes in phraseology and punctuation.

CHAPTER 3—LEASES, SALES AND MORTGAGES OF RAILROAD EQUIPMENT AND ROLLING STOCK

72-303. (6535) Repealed.

Repeal

This section (Sec. 3, p. 102, L. 1883; Sec. 1, Ch. 53, L. 1947), relating to chattel mortgages of railroad equipment, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

72-305 to 72-307. (6537 to 6539) Repealed.

Repeal

These sections (Secs. 1 to 3, pp. 148, 149, L. 1893; Sec. 1, Ch. 148, L. 1923; Sec. 2, Ch. 53, L. 1947; Sec. 14, Ch. 117, L. 1961), relating to conditional sales and chattel mortgages of railroad equipment, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

TITLE 73—RECORDING TRANSFERS

Chapter 2. Effect of recording or failure to record conveyance of real property, 73-201, 73-208 to 73-210.

CHAPTER 1—RECORDING TRANSFERS—RELEASE OF OIL, GAS AND MINERAL LEASES

73-114. (6902) Oil, gas and mineral leases, release of record of.

References

Beavers v. Rankin, 142 M 570, 385 P 2d 640.

73-115. (6903) Action to compel release—damages, etc.

Venue of Action

Although an action under this section combines three different causes of action, (1) an action for cancellation of the lease, (2) an action for the statutory penalty, and (3) an action for damages; the principal cause of action is for cancellation of the lease, which is a local nontransitory action in rem, and the defendant is not entitled to a change of venue as to any part of the action from the county where the real estate is located to the county of his residence. Beavers v. Rankin, 142 M 570, 385 P 2d 640.

References

Hidden Hollow Ranch v. Collins, 146 M 321, 406 P 2d 365.

73-116. (6904) Demand for release—when and upon whom, etc.

References

Beavers v. Rankin, 142 M 570, 385 P 2d 640.

CHAPTER 2—EFFECT OF RECORDING OR FAILURE TO RECORD CONVEYANCE OF REAL PROPERTY

Section 73-201. Record—to whom notice—recording copies.
73-208. Validation of conveyances recorded after defective execution.
73-209. Validation of conveyances recorded after defective execution—1965 act.
73-210. Validation of conveyances recorded after defective execution—1967 act.

73-201. (6934) Record—to whom notice—recording copies. Every conveyance of real property acknowledged or proved, and certified and recorded as prescribed by law, from the time it is filed with the county clerk for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees; and a certified copy of any such recorded conveyance may be recorded in any other county, and when so recorded the record thereof shall have the same force and effect as though it was of the original conveyance. Further, every conveyance and/or encumbrance of real property acknowledged or proved, and certified, and recorded as prescribed by law, and which is executed by one who thereafter acquires an interest in the said real property by a conveyance which said conveyance is constructive notice as aforesaid, is, from the time such latter conveyance is filed with the county clerk for record, constructive

notice of the contents of such earlier conveyance and/or encumbrance to subsequent takers, purchasers, mortgagees, or other encumbrance[r]s or transferees.

History: Ap. p. Sec. 259, 5th Div. Comp. Stat. 1887; re-en. Sec. 1640, Civ. C. 1895; re-en. Sec. 4683, Rev. C. 1907; amd. Sec. 1, Ch. 33, L. 1921; re-en. Sec. 6934, R. C. M. 1921; amd. Sec. 1, Ch. 147, L. 1967. Cal. Civ. C. Secs. 1213, 1218.

Amendments

The 1967 amendment added the second sentence.

Repealing Clause

Section 2 of Ch. 147, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Recording of Restrictions

Declaration of restrictions constitutes a conveyance under section 73-203, so that where residential restriction was filed with subdivision plat, it constituted constructive notice to subsequent purchaser who wanted to use land for commercial purposes. Kosel v. Stone, 146 M 218, 404 P 2d 894.

73-203. (6936) **Conveyances defined.**

Restrictions

Declaration of restrictions constitutes an instrument which affects title to land under this section, so that where filed, subsequent purchaser had constructive notice, pursuant to section 73-201, and could not use his land for commercial purposes. Kosel v. Stone, 146 M 218, 404 P 2d 894.

73-208. **Validation of conveyances recorded after defective execution.** Any instrument affecting real property, which was, previous to the date this act takes effect, copied into the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after the date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument or in the certificate of acknowledgment thereof, or the absence of any such certificate; and all such instruments heretofore acknowledged by the vice-president and assistant secretary of any corporation, or by either of them, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, and recorded, shall be valid and shall have the same force and effect as though acknowledged by the president or secretary; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of any instrument duly acknowledged and recorded.

History: En. Sec. 1, Ch. 63, L. 1963.

Title of Act

An act validating certain instruments affecting real property and which were erroneously executed or acknowledged, notice imparted by recording thereof, and providing that duly certified copies thereof may be read in evidence, with like effect as copies of an instrument duly executed, acknowledged and recorded.

Repealing Clause

Section 2 of Ch. 63, Laws 1963 repealed all acts and parts of acts in conflict therewith.

73-209. **Validation of conveyances recorded after defective execution—1965 act.** Any instrument affecting real property, provided no action is now pending to set such instrument aside, which was, previous to the date this act takes effect, copied into the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, not-

withstanding any defect, omission, or informality in the execution of the instrument or in the certificate of acknowledgment thereof, or the absence of any such certificate; and all such instruments heretofore acknowledged by the vice-president and assistant secretary of any corporation, or by either of them, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, and recorded, shall be valid and shall have the same force and effect as though acknowledged by the president or secretary; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded.

History: En. Sec. 1, Ch. 58, L. 1965.

Title of Act

An act validating certain instruments affecting real property and which were erroneously executed or acknowledged, imparting notice by recording thereof, providing that duly certified copies thereof may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded, containing a repealing clause.

73-210. Validation of conveyances recorded after defective execution—1967 act. Any instrument affecting real property, provided no action is now pending to set such instrument aside, which was, previous to January 1, 1967, copied into the proper book kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument or in the certificate of acknowledgment thereof, or the absence of any such certificate; and all such instruments heretofore acknowledged by the vice-president and assistant secretary of any corporation, or by either of them, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, and recorded, shall be valid and shall have the same force and effect as though acknowledged by the president or secretary; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded.

History: En. Sec. 1, Ch. 181, L. 1967.

Title of Act

An act validating certain instruments affecting real property and which were erroneously executed or acknowledged prior to January 1, 1967; imparting notice by recording thereof; and providing that duly certified copies thereof may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded.

TITLE 74—SALES AND EXCHANGE

Chapter 3. Rights and obligations of seller—delivery and warranty, 74-325.
4. Rights and obligations of buyer—inspection and payment, Repealed—Section 10-102, Chapter 264, Laws of 1963.
5. Exchange, 74-505.
6. Retail installment sales, 74-608.

CHAPTER 1—SALE AND AGREEMENTS FOR SALE

74-110. (7590) Form of such covenants.

References

Kosel v. Stone, 146 M 218, 404 P 2d 894.

CHAPTER 2—CONTRACT FOR SALE OF PERSONAL PROPERTY, WHEN VALID—FILING—SEIZURE ON DEFAULT

74-201, 74-202. (7591, 7592) Repealed.

Repeal

These sections (Secs. 2340, 2341, Civ. C. 1895), a statute of frauds relating to contracts for sales of personal property, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

74-204 to 74-207. (7594 to 7597) Repealed.

Repeal

These sections (Secs. 1 to 3, p. 124, L. 1899; Sec. 1, Ch. 52, L. 1911; Sec. 1, Ch. 146, L. 1919; Sec. 1, Ch. 145, L. 1925; Sec. 1, Ch. 112, L. 1935; Secs. 1 to 3, Ch. 70, L. 1943), relating to contracts for the sale of personal property with title retained by the vendor, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 3—RIGHTS AND OBLIGATIONS OF SELLER—DELIVERY AND WARRANTY

Section 74-325. Uniform Commercial Code—applicability.

74-321. (7618) Repealed.

Repeal

This section (Sec. 2382, Civ. C. 1895), relating to warranty of wholesomeness of food sold, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

74-322. (7619) Warranty on sale of good will.

Breach by Seller

Where buyer of business broke contract by failing to make agreed payments for exclusive business rights in a territory and seller entered the territory after buyer's breach but in violation of the agreement, buyer was entitled to a setoff of the amount of profit which seller took from the restricted territory against seller's action for the full amount of the contract. Leiman-Scott, Inc. v. Holmes, 142 M 58, 381 P 2d 489.

74-325. Uniform Commercial Code—applicability. This chapter shall not apply to sales subject to the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. 74-325 by Sec. 11-150, Ch. 264, L. 1963.

CHAPTER 4—RIGHTS AND OBLIGATIONS OF BUYER—INSPECTION AND PAYMENT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

74-401 to 74-403. (7622 to 7624) Repealed.

Repeal

These sections (Secs. 2400 to 2402, Civ. C. 1895), relating to the rights and obligations of the buyer of goods, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 5—EXCHANGE

Section 74-505. Uniform Commercial Code—applicability.

74-502. (7633) Repealed.

Repeal

This section (Sec. 2431, Civ. C. 1895), making a statute of frauds applicable to contracts for exchange, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

74-505. Uniform Commercial Code—applicability. The provisions of this chapter shall not apply to exchanges subject to the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. 74-505 by Sec. 11-151, Ch. 264, L. 1963.

CHAPTER 6—RETAIL INSTALLMENT SALES

Section 74-608. Finance charge limitation.

74-602. Definitions.

References

Stalcup v. Montana Trailer Sales & Equipment Co., 146 M 494, 409 P 2d 542.

74-607. Requirements and prohibitions, etc.

Attorney's Fees

This section, unlike other sections of this code governing recovery of attorney's fees, is permissive and designed to inform the holder of a retail installment sale contract what he may recover in addition to damages when the contract has been breached by the buyer, and unless it is stipulated by contract, the buyer has no right to attorney fees should he successfully resist the action on the contract. Stalcup v. Montana Trailer Sales & Equipment Co., 146 M 494, 409 P 2d 542.

74-608. Finance charge limitation. (a) Notwithstanding the provisions of any other law, the finance charge included in a retail installment transaction shall not exceed the following schedule:

(1) As to motor vehicles:

Class 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made—seven dollars ($7) per one hundred dollars ($100) per year.

Class 2. Any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two (2) years prior to the year

in which the sale is made—nine dollars ($9) per one hundred dollars ($100) per year.

Class 3. Any used motor vehicle not in class 2 and designated by the manufacturer by a year model more than two (2) years prior to the year in which the sale is made—eleven dollars ($11) per one hundred dollars ($100) per year.

(2) As to services and goods other than motor vehicles: (i) On so much of the principal balance as does not exceed three hundred dollars ($300), eleven dollars ($11), per one hundred dollars ($100) per year; (ii) if the principal balance exceeds three hundred dollars ($300), but is less than one thousand dollars ($1,000), nine dollars ($9) per one hundred dollars ($100) per year on that portion over three hundred dollars ($300); (iii) if the principal balance exceeds one thousand dollars ($1,000), seven dollars ($7) per one hundred dollars ($100) per year on that portion over one thousand dollars ($1,000).

(b) Such finance charge shall be computed on the principal balance as determined under section 7(f) [74-607(f)] of this act on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total time balance thereof is required to be paid in installments. A minimum finance charge of twenty dollars ($20) may be charged on any retail installment transaction.

(c) When a retail installment contract provides for payment, other than in equal successive monthly installments, the finance charge may be at a rate which will provide the same yield as is permitted on monthly payment contracts under subsections (a) and (b) hereof, having due regard for the schedule of payments in the contract.

History: En. Sec. 8, Ch. 282, L. 1959; amd. Sec. 11-152, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted a subsection (d), for text of which see parent volume.

Interest on Conditional Sales Contracts

In a diversity action to recover the balance due on a note and conditional sales contract executed and delivered by defendants to a North Dakota corporation and assigned by it to plaintiff, where defendants contended that the rate of interest charged them pursuant to this section, was 16.3% which exceeded the maximum rate of 10% permitted by section 47-125 and constituted a special law regulating the rate of interest on money, proscribed by section 26, article V of the constitution, federal court applied the doctrine of abstention and postponed further action until the issue was determined by the supreme court of Montana. B-W Acceptance Corp. v. Torgerson, 234 F Supp 214, 216.

TITLE 75—SCHOOLS

Chapter 1. State board of education—composition, powers and duties, 75-106.
2. Revenue-producing facilities at university of Montana, 75-216 to 75-223.
3. Control of state educational institutions, 75-301 to 75-303, 75-310, 75-313, 75-314.
4. The Montana university system, 75-401, 75-402.
5. University of Montana—law and forestry schools, 75-506.1 to 75-506.7.
7. Montana state university—Montana wool laboratory—agricultural experiment stations, 75-706, 75-723.
8. Montana grain inspection laboratory, 75-807, 75-811.
13. The public schools—superintendent of public instruction, 75-1301, 75-1315.
16. School trustees, 75-1604, 75-1614, 75-1618, 75-1620 to 75-1622, 75-1630, 75-1632, 75-1637, 75-1641 to 75-1645.
17. Budget system, 75-1706, 75-1713.1, 75-1716, 75-1719, 75-1720, 75-1723.
18. School districts, 75-1802, 75-1804, 75-1805, 75-1810, 75-1813, 75-1813.1, 75-1816.
19. Clerks of school districts—school census, 75-1904.
20. Grades and courses of study in the public schools—correspondence schools—visual teaching, 75-2009.
22. School day, month and year—holidays—constitution, pioneer and arbor day, 75-2212.
24. Teachers—powers and duties—election—dismissal, 75-2401.
25. Teachers' examinations and certificates, 75-2501, 75-2516, 75-2518, 75-2521.
27. Teachers' retirement system, 75-2701, 75-2703 to 75-2705, 75-2707 to 75-2709, 75-2709.1, 75-2709.2.
30. Juvenile disorderly persons—commitment to industrial school, 75-3002.
31. Schoolhouse sites and construction, 75-3109 to 75-3125.
33. School buses—requirements—drivers' qualifications—construction and operation, 75-3308.
34. Transportation of pupils, 75-3403, 75-3413, 75-3414.
35. Free textbooks, 75-3503, 75-3505.
36. Uniform system of free public schools—state support—schedule of contributions, 75-3611 to 75-3612.3, 75-3613 to 75-3621, 75-3624.
37. Finance, 75-3701, 75-3706, 75-3722.
38. Extra taxation for school purposes, 75-3801, 75-3806.
39. Bonds, 75-3904, 75-3908.
41. High schools—county—junior and district—joint school systems, 75-4120 to 75-4128, 75-4130, 75-4133, 75-4134, 75-4138, 75-4139, 75-4146.
42. High schools—county—junior and district—joint school systems continued—vocational education, 75-4202, 75-4230, 75-4246.
43. Designation of high schools as vocational training centers, 75-4301 to 75-4308.
44. Community college districts, 75-4413 to 75-4430.
45. High School Budget Act, 75-4516.1, 75-4518.1, 75-4521, 75-4524, 75-4525.
46. High school districts—public works, 75-4601, 75-4607, 75-4612 to 75-4614.
48. School lunch program and child nutrition, 75-4802, 75-4803, 75-4805, 75-4806.
50. Education classes for mentally retarded and physically handicapped children, 75-5001, 75-5003, 75-5005.
51. Federal aid, 75-5101.
52. Law enforcement academy, 75-5203, 75-5206, 75-5208.
53. Driver education, 75-5301 to 75-5309.
54. School safety patrols, 75-5401 to 75-5405.
55. School districts for nonsectarian child care institutions, 75-5501 to 75-5508.

CHAPTER 1—STATE BOARD OF EDUCATION—COMPOSITION, POWERS AND DUTIES

Section 75-106. Meetings, per diem and expenses.

75-106. (835) **Meetings, per diem and expenses.** The board shall hold quarterly meetings at the state capitol or at any other town or city

in the state of Montana in or near which may be located any institutions under its jurisdiction on the second Monday in April, July, September and December in each year, and may hold special meetings at any time and place it may direct. The president and secretary of the board may also call special meetings of said board at any time and place, if in their judgment necessity requires it. The secretary of the board shall notify the members of all regular and special meetings. The members of the board, other than ex officio members shall receive twenty ($20) dollars per day each for each day in attendance on meetings of said board or in the performance of any duty or services as members of such board and necessary and actual expenses incurred. All expenses of the state board of education, including per diem and expenses of members and the salary and expenses of the executive secretary of the Montana university system incurred while transacting university business, shall be paid out of the appropriations made by the legislative assembly for said university.

History: En. Sec. 6, p. 159, L. 1893; re-en. Sec. 1515, Pol. C. 1895; re-en. Sec. 647, Rev. C. 1907; amd. Sec. 105, Ch. 76, L. 1913; amd. Sec. 1, Ch. 196, L. 1919; re-en. Sec. 835, R. C. M. 1921; amd. Sec. 1, Ch. 146, L. 1929; amd. Sec. 1, Ch. 115, L. 1935; amd. Sec. 1, Ch. 158, L. 1945; amd. Sec. 1, Ch. 236, L. 1953; amd. Sec. 1, Ch. 103, L. 1967.

Amendments

The 1967 amendment increased from $15 to $20 the per diem of members of the state board of education; deleted "provided, however, that no one of such members shall receive more than five hundred ($500.00) dollars per diem in any one (1) fiscal year" at the end of the fourth sentence; and substituted "Montana university system" for "university of Montana" before "incurred while transacting" in the last sentence.

75-107. (836) Powers and duties.

Delegation of Powers

This section restricts the state board of education from delegating to college officials its power to select teachers or instructors. Brown v. State Board of Education, 142 M 547, 385 P 2d 643.

CHAPTER 2—REVENUE-PRODUCING FACILITIES AT UNIVERSITY OF MONTANA

Section 75-216. Powers of regents enumerated.
75-217. Title to facilities.
75-218. Borrowing by regents.
75-219. State not obligated.
75-220. Units of financing.
75-221. Restriction on use of state funds.
75-222. Previous contracts unimpaired.
75-223. Prior obligations not affected.

75-207 to 75-215. Repealed.

Repeal

These sections (Sec. 1, Ch. 158, L. 1961; Secs. 1 to 8, Ch. 232, L. 1961), relating to student housing facilities at the university of Montana and to the handling of pledged fees therefrom, were repealed by Sec. 9, Ch. 252, Laws 1963.

75-216. Powers of regents enumerated. The regents of the Montana university system of Montana may:

(1) Acquire, erect, equip, enlarge and improve, at any unit of the Montana university system, any of the following types of revenue-producing facilities: land, residence halls, dormitories, houses, apartments

and other housing facilities; dining rooms and halls, restaurants, cafeterias and other food service facilities; student union buildings and facilities; and those other facilities specifically authorized by joint resolution of the legislative assembly.

(2) Rent housing facilities and provide food and other services to the students, officers, guests and employees of the unit at rates that will insure a reasonable net income over operating expenses and will provide for debt service and reserves, and provide for the collection of charges, admissions and fees for the use of other facilities by students and other persons, which charges, admissions and fees shall not be deemed to be tuition within the meaning of section 75-506 of the Revised Codes of Montana, 1947, and may be collected from any or all students. Student building fees established and in effect on January 1, 1965, which are imposed uniformly upon all students, or upon all of a specified class of students in attendance at any unit of the Montana university system, shall not be increased without authorization by law, unless absolutely necessary to the extent to pay only principal or interest due on obligations for which such fees have been or shall be pledged, or to maintain reserves securing the payment of such obligations, in accordance with the indentures, resolutions, contracts or other instruments authorizing the issuance of such obligations; provided that at any unit of the Montana university system where the aggregate amount of student building fees in effect on January 1, 1965, was less than fifty dollars ($50) per student per academic year, such fees may be increased or additional student building fees may be established, to an aggregate amount not exceeding fifty dollars ($50) per student per academic year and provided further that additional student building fees may be established or existing student building fees may be increased at the university of Montana, at Missoula, to an aggregate amount not to exceed ninety dollars ($90) per student per academic year. This limitation shall not affect admission or use charges, which are made to individual students or others in proportion to their use or occupancy of particular facilities or services and shall not affect any student building fees or other charges which are made to nonresident students as defined in section 75-506, R.C.M. 1947.

(3) Hold the net income derived from the operation of such facilities and the charges, admissions and fees so collected and devote the revenues from these sources to debt service and reserves, repairs, replacements and betterments of the facilities or, so far as such revenues have not been previously obligated for these purposes, to the acquisition, erection, equipping, enlarging or improvement of additional facilities of the types described in this section.

(4) Exercise full control and complete management of such facilities.

(5) Rent the facilities to other public or private persons, firms and corporations for such uses, at such times, for such periods and at such rates as in the regents' judgment will be consistent with the full use thereof for academic purposes and will add to the revenues available for capital costs and debt service.

History: En. Sec. 1, Ch. 252, L. 1963; amd. Sec. 1, Ch. 246, L. 1965; amd. Sec. 1, Ch. 13, L. 1967.

Title of Act

An act relating to the acquisition, erection, equipment, enlargement and improvement of housing and other revenue-producing facilities at units of the university of Montana, and the borrowing of funds therefor by the regents by the issuance and sale of negotiable bonds and other securities and the making of purchases on time, payable solely from net income from rents and board, receipts from charges, admissions or fees for the facilities, and gifts, contributions and grants of funds, without obligating the state of Montana or using state funds except as provided, and the provision of security for such borrowing, and the refunding of outstanding obligations; repealing sections 75-207, 75-208, 75-209, 75-210, 75-211, 75-212, 75-213, 75-214 and 75-215, R. C. M. 1947.

Amendments

The 1965 amendment added the material at the end of subsection (1) commencing with "and those other facilities "; added the last two sentences to subsection (2); inserted "and the charges, admissions and fees so collected" after "operation of such facilities" in subsection (3); inserted "the revenues from these sources" after "devote" in subsection (3); added subsection (5); and made numerous changes in phraseology.

The 1967 amendment substituted "Montana university system" for "university of Montana" wherever it appears in the section; inserted "land" after "revenue-producing facilities," "houses" after "dormitories," and "restaurants, cafeterias" after "dining rooms and halls" in the first sentence of subsection (1); deleted a sentence at the end of subsection (1) which read "When a facility or part of a facility has been designated as a student union, such facility or part of facility shall be used only as a student union"; and substituted "the university of Montana" for "Montana state university" preceding "at Missoula" near the end of the second sentence of subsection (2).

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

75-217. Title to facilities. The title to all real estate and improvements acquired and erected under the provisions of this chapter shall be taken and held in the name of the state of Montana, except that title to fixtures and equipment purchased on a time or installment basis may remain in the vendor until the latter has been paid.

History: En. Sec. 2, Ch. 252, L. 1963.

75-218. Borrowing by regents. In carrying out the above powers, the regents may:

(1) Borrow money for any purpose or purposes stated in this chapter, including, if deemed desirable by the regents, the payment of interest on the money borrowed for a facility during the construction thereof and for one (1) year thereafter and the creation of a reserve for the payment of bond principal and interest.

(2) Make purchases on a time or installment basis.

(3) Issue bonds, notes and other securities, negotiable or otherwise, secured as provided in this section, including bearer bonds with appurtenant interest coupons, which shall be fully negotiable notwithstanding any limitation on the source of payment thereof, or fully registered bonds, or bonds registered as to ownership of principal only.

(4) Pledge for the payment of the purchase price of any facility or of the principal and interest on bonds, notes or other securities authorized in this chapter or otherwise obligate:

(a) The net income received from rents, board or both in housing, food service and other facilities.

(b) Receipts from student building, activity, union and other special fees prescribed by the regents for all students.

(c) Other income in the form of gifts, bequests, contributions, federal grants of funds, including the proceeds or income from grants of lands or other real or personal property, receipts from athletic and other contests, exhibitions and performances and collections of admissions and other charges for the use of facilities, including all use by other persons, firms and corporations for athletic and other contests, exhibitions and performances and for the conduct of their business, educational or governmental functions.

(5) Make payments on loans or purchases from any other available income not obligated for such purposes, including receipts from sales of materials, equipment and fixtures of such facilities, or from sale of the facilities themselves other than land.

(6) Secure any bonds authorized hereunder by a trust indenture between the regents and any bank or trust company within or without the state of Montana, or by a resolution establishing covenants of the regents with the holders of such bonds, relating to the construction, operation, use and insurance of the facilities, the segregation, expenditure and audit of accounts of the bond proceeds and of the income pledged, the establishment and collection of rents, charges, admissions and fees sufficient to provide net income adequate for prompt payment of principal and interest on bonds and creation and maintenance of reserves for that purpose, and such other matters as the regents may determine to be necessary or desirable for the security and marketability of the bonds.

(7) Issue and sell or exchange bonds, secured as provided in this section, for the refunding of any outstanding bonds or other obligations heretofore or hereafter issued by the regents, subject to the following provisions:

(a) Refunding bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds, or may be sold at a price not less than par plus accrued interest. They may be secured by a pledge of the same revenues as the bonds refunded, or by a pledge of different or additional revenues received at the same unit of the university. Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of such outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable, if the revenues pledged therefor are not sufficient, but not to refund any bonds or interest due which can be paid from revenues then on hand.

(b) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby, if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient, or if they are issued to refund before maturity bonds issued before January 1, 1965, for the purpose of releasing revenues required for payment of the outstanding bonds permitting the pledge thereof for the security of other bonds as well as the refunding bonds, subject to the rights of the holders of the outstanding bonds until those bonds are fully paid and redeemed. Except as authorized in the preceding sentence, re-

funding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least three eights of one per cent (⅜ of 1 %) less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(c) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the federal reserve system and has a combined capital and surplus not less than one million dollars ($1,000,000), and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption from the proceeds of the refunding bonds, and to pay and redeem the principal amount of each such bond at maturity or, if prepayable, at said redemption date, and any premium required for redemption on such date; and the resolution or indenture authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with such escrow funds shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for co-operatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

(d) Revenues or other funds on hand, in excess of amounts pledged by resolutions or indentures authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by the regents for the purpose of such refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed as provided in subsection (c) hereof, to the extent consistent with the resolutions or indentures authorizing such outstanding bonds.

(8) Sell bonds and sell or exchange refunding bonds issued hereunder in such manner and upon such terms as to maturities, interest rates and redemption privileges, and for such price, as the regents shall determine with the approval of the state controller.

History: En. Sec. 3, Ch. 252, L. 1963; amd. Sec. 2, Ch. 246, L. 1965.

Amendment

The 1965 amendment substituted "athletic and other contests, exhibitions and performances" for "athletic contests" after "receipts from" in paragraph (4)(c); added the material at the end of paragraph (4)(c) commencing with "including all use"; inserted the second sentence in paragraph (7)(a); substituted "they are issued to refund before maturity bonds issued before January 1, 1965, for the purpose of releasing revenues required for payment of the outstanding bonds permitting the pledge thereof for the security of other bonds as well as the refunding bonds, subject to the rights of the holders of the outstanding bonds until those bonds are fully paid and redeemed" for "the refunding bonds are combined with an issue of new bonds for replacements, repairs, betterment or new facilities, and the lien of such new bonds upon the net income and receipts pledged must be junior and subordinate to the lien of the outstanding bonds refunded, under the terms of the resolution or indenture authorizing the outstanding bonds, as applied to circumstances existing on the date of refunding" at the end of the first sentence of paragraph (7)(b); inserted "from the proceeds of the refunding bonds" after "called for redemption" in the first sentence of paragraph (7)(c); and made minor changes in punctuation and phraseology.

Effective Date

Section 3 of Ch. 246, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

75-219. State not obligated. No obligation created under this chapter shall ever become a charge against the state of Montana, and all such obligations, including principal and interest, shall be payable solely from the sources authorized in this chapter.

History: En. Sec. 4, Ch. 252, L. 1963.

75-220. Units of financing. In creating and discharging obligations under this chapter, all of the revenue-producing facilities at each unit of the university of Montana may be considered as one; but income received at one (1) unit shall not be used to discharge obligations created for facilities at another unit.

History: En. Sec. 5, Ch. 252, L. 1963.

75-221. Restriction on use of state funds. No state funds except those specified in section 3 [75-218] shall be obligated or used for the purposes of this chapter, unless specifically directed by the legislative assembly.

History: En. Sec. 6, Ch. 252, L. 1963.

75-222. Previous contracts unimpaired. This chapter shall not impair any contract, indenture or agreement executed under previous laws.

History: En. Sec. 7, Ch. 252, L. 1963.

75-223. Prior obligations not affected. No provision of this chapter shall affect or impair:

(1) Any contract or undertaking, or the financing or agreement to finance any contract or undertaking entered into under the provisions of the laws repealed hereby prior to the effective date of this chapter;

(2) The issuance of bonds to finance facilities authorized or commenced under the laws repealed hereby prior to the effective date of this chapter.

History: En. Sec. 8, Ch. 252, L. 1963.

Repealing Clause

Section 9 of Ch. 252, Laws 1963 read "Sections 75-207, 75-208, 75-209, 75-210, 75-211, 75-212, 75-213, 75-214 and 75-215, R. C. M. 1947 are repealed."

Effective Date

Section 10 of Ch. 252, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 9, 1963.

CHAPTER 3—CONTROL OF STATE EDUCATIONAL INSTITUTIONS

Section 75-301. General control of state institutions.
75-302. Local executive boards—creation, residence and powers.
75-303. Officers.
75-310. Control of expenditures of state institutions.
75-313. Research and development programs of educational units authorized —experimentation and testing.
75-314. Powers of educational units in conducting research programs.

75-301. (841) **General control of state institutions.** The general control and supervision of the Montana state university, Montana state college, Montana school of mines, western Montana college of education, eastern Montana college of education and northern Montana college, all being units of the university of Montana, and Montana state school for the deaf and blind are vested in the state board of education.

History: New section recommended by code commissioner, 1921; amd. Sec. 4, Ch. 160, L. 1925; amd. Sec. 1, Ch. 12, L. 1943; amd. Sec. 3, Ch. 158, L. 1945; amd. Sec. 78, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "western Montana college of education" for "Montana state normal college" and "eastern Montana college of education" for "eastern Montana state normal school"; and deleted "the state vocational school for girls, state orphans' home, Montana state industrial school, Montana state training school" which followed "university of Montana."

75-302. (842) **Local executive boards—creation, residence and powers.** There shall be an executive board consisting of three (3) members, for each of said institutions named in the preceding section, all of whom shall be appointed by the governer, by and with the advice and consent of the state board of education. The president of such institution shall not be eligible to appointment as a member of the board. At least two (2) of said members shall reside in the county where such institution is located. Said executive board shall have such immediate direction and control, other than financial, of the affairs of such institution as may be conferred on such board by the state board of education, subject always to the supervision and control of said state board.

History: En. Sec. 2, Ch. 73, L. 1909; re-en. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 842, R. C. M. 1921; amd. Sec. 4, Ch. 158, L. 1945; amd. Sec. 3, Ch. 242, L. 1953; amd. Sec. 79, Ch. 266, L. 1963.

Amendment

The 1963 amendment deleted "excepting the Montana state industrial school" following "the preceding section" in the first sentence; and deleted from the end of the section a proviso reading, "provided this section shall not apply to the executive board for the state vocational school for girls."

75-303. (843) **Officers.** The board shall elect a chairman and shall also appoint a secretary who may or may not be a member of said board.

History: En. Sec. 3, Ch. 73, L. 1909; amd. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 843, R. C. M. 1921; amd. Sec. 4, Ch. 242, L. 1953; amd. Sec. 80, Ch. 266, L. 1963; amd. Sec. 32, Ch. 177, L. 1965.

Amendments

The 1963 amendment deleted "excepting the board of the Montana state industrial school herein provided for" following "The board" at the beginning of the section.

The 1965 amendment deleted second, third, and fourth sentences reading, "The treasurer of said board shall be treasurer of the institution, and such secretary and treasurer shall give bond with good and sufficient surety for the faithful performance of his duties as such, and for the faithful accounting for and paying over to, and for the use of said institution, all moneys received by him as treasurer. Said bond shall run to the state of Montana and shall be in such sum as may be designated by the state board of examiners, and when executed shall be approved by said board of examiners. The duties of the chairmen and secretaries of each of said executive boards shall be those usually performed by such officers, or which may be designated by the state board of education or the state board of examiners."

75-310. (850) Control of expenditures of state institutions. The state board of education pursuant to the terms of appropriations of the state legislature or of Congress or of gifts of donors, shall determine the need for all expenditures and control the purposes for which all funds of said institutions shall be spent, subject to the provisions of the law dealing with the state purchasing agent, sections 82-1901 to 82-1923.

History: En. Sec. 13, Ch. 73, L. 1909; re-en. Sec. 110, Ch. 76, L. 1913; re-en. Sec. 850, R. C. M. 1921; amd. Sec. 1, Ch. 82, L. 1951; amd. Sec. 24, Ch. 271, L. 1963.

Amendment

The 1963 amendment substituted "subject to the provisions of the law dealing with the state purchasing agent, sections 82-1901 to 82-1923" at the end of the section for a sentence reading, "Subject to this control and to the provisions of the law dealing with the state purchasing agent, sections 82-1901 to 82-1923, the state board of examiners shall let all contracts, issue all bonds for any and all buildings or improvements, and shall audit all claims to be paid from all moneys; but said state board of examiners shall have authority to confer upon the executive boards of such institutions such power and authority in contracting current expenses, and in auditing, paying and reporting bills for salaries or other expenses incurred in connection with said institutions, as may be deemed by said state board of examiners to be to the best interest of said institution."

75-312. Repealed.

Repeal

This section (Sec. 1, Ch. 25, L. 1957), relating to the budget committee of the state board of education, was repealed by Sec. 82, Ch. 266, Laws 1963.

75-313. Research and development programs of educational units authorized—experimentation and testing. Subject to the prior approval of the state board of education of the state of Montana ex officio regents of the Montana university system, the several units of the Montana university system, and the other educational institutions of the state of Montana under the control of the state board of education are authorized and empowered to sponsor, engage in, or participate with other units in programs of research and development including such experimental and testing work as may be appropriate thereto in the fields of science, health, education, and natural resources. Such authorized programs may be conducted by and through any department or school in the unit or educational institution or by and through any foundation or organization which is established for the purpose of assisting the unit or educational institution in the accomplishment of its purposes.

History: En. Sec. 1, Ch. 99, L. 1967.

Title of Act

An act authorizing programs of research and development in the fields of science, health, education and natural resources through authorized agencies of the Montana university system in cooperation with other governmental and private agencies and providing that the same shall not be a charge upon the state of Montana.

Cross-Reference

Authority for institution inmates to participate, sec. 80-1410.

75-314. Powers of educational units in conducting research programs. Any such unit, educational institution, foundation, or organization engaging in an authorized program may:

(1) enter into contracts with private organizations, companies, firms, or individuals for conducting such authorized programs;

(2) subject to the prior approval of the governing board of such institution, conduct activities concerning such authorized programs within any of the penal, corrective, or custodial institutions of the state of Montana and engage the voluntary participation of the inmates thereof in such programs;

(3) accept contributions, grants, or gifts from any private organization, company, firm, or individual, or any governmental agency or department for such programs for the advancement of research and development in the fields of science, health, education, and natural recources; and enter into agreements or co-operative undertakings with any private organization, company, firm, or individual or any governmental agency or department with respect thereto, including the matching of funds from such sources with funds otherwise available to it;

(4) retain, accumulate, invest, commit and expend the funds and proceeds from such authorized programs, including the acquisition of real and personal property reasonably required for the accomplishment of the same, provided, however, that no portion thereof may be diverted from or used for purposes other than those authorized herein, and that no program authorized or undertaken pursuant to the provisions hereof shall ever become a charge upon or obligation of the state of Montana or the general funds appropriated for the normal operation of such unit or agency.

History: En. Sec. 2, Ch. 99, L. 1967.

CHAPTER 4—THE MONTANA UNIVERSITY SYSTEM

Section 75-401. Institutions constituting university system.
75-402. Names of units of university system.

75-401. (852) Institutions constituting university system. The university at Missoula, the state university at Bozeman, the college of mineral science and technology at Butte, the college at Dillon, the college at Billings and the college at Havre, and such departments of said institutions as may hereafter be organized, shall constitute the Montana university system. All references in the Revised Codes of Montana 1947 to the "university of Montana" shall mean "the Montana university system."

History: En. Sec. 1, Ch. 92, L. 1913; 1, Ch. 6, L. 1927; amd. Sec. 1, Ch. 3, re-en. Sec. 852, R. C. M. 1921; amd. Sec. L. 1965.

Amendment

The 1965 amendment deleted "state" before "university at Missoula"; substituted "state university" for "college of agriculture and mechanic arts" before "at Bozeman"; substituted "college of mineral science and technology" for "school of mines"; deleted "normal" before "college at Dillon"; substituted "college" for "eastern Montana state normal school" before "at Billings"; substituted "college at Havre" for "northern agricultural and manual training school at Fort Assinniboine"; substituted "Montana university system" for "university of Montana, under the name and style of university of Montana" at the end of the first sentence; and added the second sentence.

75-402. (852.1) **Names of units of university system.** The legal names of the units of the Montana university system shall be as follows:

Unit at Missoula, university of Montana.

Unit at Bozeman, Montana state university.

Unit at Butte, Montana college of mineral science and technology.

Unit at Dillon, western Montana college.

Unit at Billings, eastern Montana college.

Unit at Havre, northern Montana college.

History: En. Sec. 1, Ch. 28, L. 1935; amd. Sec. 2, Ch. 3, L. 1965.

Amendment

The 1965 amendment substituted "Montana university system" for "university of Montana" in the preliminary clause; substituted "university of Montana" for "Montana State University"; substituted "Montana state university" for "Montana State College"; substituted "college of mineral science and technology" for "School of Mines"; deleted "of Education" following "western Montana college" and following "eastern Montana college"; deleted "Fort Assinniboine and" preceding "Havre" in the final line; and made another minor change in phraseology.

Repealing Clauses

Section 3 of Ch. 3, Laws 1965 read "Section 75-402.1 R. C. M. 1947, is repealed."

Section 4 of Ch. 3, Laws 1965 repealed all acts and parts of acts in conflict therewith.

75-402.1. Repealed.

Repeal

This section (Sec. 1, Ch. 30, L. 1949), changing the names of schools at Dillon and Billings, was repealed by Sec. 3, Ch. 3, Laws 1965.

75-403. (853) **Control vested in state board of education, etc.**

Delegation of Powers

Section 75-107 restricts the state board of education from delegating to college officials its power to select teachers and instructors. Brown v. State Board of Education, 142 M 547, 385 P 2d 643.

75-410. (860) **Repealed.**

Repeal

This section (Sec. 1, Ch. 123, L. 1917; Sec. 1, Ch. 49, L. 1923; Sec. 1, Ch. 41, L. 1925), relating to the refunding of fares to students, was repealed by Sec. 1, Ch. 127, Laws 1967.

CHAPTER 5—UNIVERSITY OF MONTANA—LAW AND FORESTRY SCHOOLS

Section 75-506.1. Indians permitted to attend without payment of fees—selection.
75-506.2. Determination of residence—intent of act.
75-506.3. Definition of terms.
75-506.4. Presumptions as to domicile.
75-506.5. Evidence as to domiciliary intent—changes in status.
75-506.6. Residence of minors—period of residence required to change status.
75-506.7. Appeal.

75-506.1. Indians permitted to attend without payment of fees—selection. Any person of one-fourth (¼) Indian blood or more who shall have completed the regular course of a four-year accredited high school or federal Indian school in Montana, and shall have shown evidence of studious and industrious habits, shall be entitled, upon the recommendation of the state board of education, to enroll in any of the units of the university of Montana for four (4) years without the payment of fees required of students attending such institutions. The number of such Indians chosen each year shall not exceed forty-eight (48). Rules and regulations governing the selection of these pupils shall be formulated by the state board of education and the state superintendent of public instruction is hereby designated as the agent of the board in carrying out this act.

History: En. Sec. 1, Ch. 108, L. 1951; amd. Sec. 1, Ch. 87, L. 1961; amd. Sec. 1, Ch. 129, L. 1967.

Amendments

The 1967 amendment deleted "who shall receive a diploma and" after "or more" in the first sentence; substituted "forty-eight (48)" for "twenty-four (24)" and deleted "of whom at least six (6) shall be enrolled for the purpose of training to become teachers" at the end of the second sentence.

75-506.2. Determination of residence—intent of act. It is the intent of this act that the units of the university of Montana shall apply uniform rules, as prescribed in this act and not otherwise, in determining whether students shall be classified as resident or nonresident students for the purpose of charging tuition and additional fees for nonresident students as authorized by section 75-506, R. C. M. 1947.

History: En. Sec. 1, Ch. 164, L. 1965.

Title of Act

An act to establish presumptions and rules to aid in determining the resident status of students attending the university of Montana for tuition and fee purposes and providing an effective date.

75-506.3. Definition of terms. Wherever used in this act:

"Unit" shall mean a unit of the Montana university system.

"Resident student" shall mean a student who has been domiciled in Montana for one (1) year or more immediately preceding registration at any unit of the Montana university system for any term or session for which resident classification is claimed, provided, that attendance in Montana as a full or part-time student at any college, university, or other institution of higher education shall not alone be sufficient to qualify for residence in Montana. Any graduate of a Montana high school whose parents, parent or guardian have resided in the state of Montana at least one (1) of the two (2) years immediately preceding his graduation from high school shall also be entitled to classification as a resident student for tuition and fee purposes, provided that said student's parents or guardian have not established a domicile in another state which will give him the right to be classified as a resident student in that state.

"Domicile" shall mean a person's true, fixed, and permanent home and place of habitation.

"Minor" shall mean a male or female person who has not obtained the age of twenty-one (21) years.

"Qualified person" shall mean a person legally qualified to determine his own domicile.

"Emancipated minor" shall mean a person under the age of twenty-one (21) years who supports himself from his own earnings or is married. Any person who receives more than twenty-five per cent (25%) of the cost of supporting himself from any person other than an agency of the government shall not be considered an "emancipated minor" under this act.

History: En. Sec. 2, Ch. 164, L. 1965; amd. Sec. 2, L. 1967.

Amendments

The 1967 amendment substituted "Montana university system" for "university of Montana" in the sentence defining "unit"; in the sentence defining "resident student," substituted "Montana university system" for "university of Montana," and substituted the pasage beginning "attendance in Montana as a full or part time student" for "that attendance at a unit of the university of Montana shall not alone be sufficient to qualify for residence in Montana" after "provided that"; added the definition of "emancipated minor" at the end of this section; and inserted the arabic number after the written number throughout the section.

75-506.4. Presumptions as to domicile. Unless the contrary appears to the satisfaction of the registering authority of the unit at which a student is registering, it shall be presumed that:

(1) The domicile of a minor is that of his father, or if no father that of his mother, or if there is a guardian of his person that of such guardian; provided that the court appointing such guardian shall certify that the primary purpose of such appointment is not to qualify such minor as a resident of this state; or if one parent has custody of the minor that of such parent.

(2) The domicile of a married woman is normally that of her husband; provided, however, that a resident woman student who marries a nonresident does not by that fact alone lose her resident status for tuition and fee purposes for a period of four (4) years after said marriage.

(3) A person does not gain or lose resident status by reason of his presence in any state or country while a member of the armed forces of the United States; provided, that a member of the armed forces may obtain resident status for himself, his spouse, or his children, after living in Montana for one year, and complying with the provisions of this act.

(4) The establishment of a new domicile in Montana by a qualified person formerly domiciled in another state has occurred if he is physically present in Montana without a present intention to return to such other state or to acquire a domicile at some other place outside of Montana.

(5) Once established a domicile has not been lost by mere absence unaccompanied by intention to establish a new domicile.

(6) Any graduate of a Montana high school who shall apply for admittance to a unit of the Montana university system within one (1) year after his or her graduation and whose parent or parents, having custody of such graduate, has or have resided in the state of Montana in at least one (1) of the two (2) years immediately preceding such graduate's graduation from a Montana high school, shall be presumed to be a resident student for such time as he or she attends any unit of the university system during the regular school year for the next four (4) consecutive years, or until his or her parent or parents, having custody,

have established such residence in another state as will classify such student as a resident student of the latter state.

History: En. Sec. 3, Ch. 164, L. 1965; amd. Sec. 3, Ch. 299, L. 1967.

Amendments

The 1967 amendment added the proviso at the end of subdivision (2), and added subdivision (6).

75-506.5. Evidence as to domiciliary intent—changes in status. To aid the units in deciding whether a student, or parent, or guardian of the person of a student, is domiciled in Montana the following rules shall be applied:

(1) Nonpayment of Montana income tax by a person whose income is sufficient to be taxed is highly persuasive evidence of non-Montana domicile.

(2) A qualified person cannot establish a new domicile in Montana if he lacks the intention of so doing.

(3) After a student has registered at a unit his classification for tuition and fee purposes remains unchanged in the absence of satisfactory evidence to the contrary. Such evidence shall be reduced to writing and filed with the registering authority of the unit. Changes in classification established by such evidence, and whether from resident to nonresident or the reverse, shall be in writing, signed by the registering authority of the unit, and shall be given effect at the time of the student's next registration.

History: En. Sec. 4, Ch. 164, L. 1965.

75-506.6. Residence of minors—period of residence required to change status. A minor shall qualify for a change in status only if his parents or legal guardian or person having legal custody shall have completed the requirements for establishing domicile as defined in this act. A minor or adult student who has registered at any unit of the university of Montana shall not qualify for a change in his classification for tuition purposes unless he shall have completed twelve continuous months of residence while not attending a unit of the university of Montana or while serving in the armed forces.

History: En. Sec. 5, Ch. 164, L. 1965.

Effective Date

Section 6 of Ch. 164, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 4, 1965.

75-506.7. Appeal. Any student whose request for classification as a resident student is denied by the registering authority of a unit of the Montana university system shall have the right of automatic appeal from such denial to the executive secretary of the regents of the Montana university system. Immediately upon rejection of such a request, the registering authority shall forward a copy of his decision, together with his complete file on the student requesting resident status to the executive secretary. The executive secretary may accept other evidence of residence from either the student, the registering authority, or other interested persons. Within thirty (30) days of the receipt of the decision of the registering authority, the executive secretary shall determine the

resident status of the student and shall notify the student and the registering authority of his decision, which may be appealed to the full board of regents if said board in its discretion, agrees to entertain such an appeal.

History: En. 75-506.7 by Sec. 1, Ch. 299, L. 1967.

Title of Act

An act to provide a uniform method of appeal for university students classified as nonresidents for tuition purposes; and amending sections 75-506.3 and 75-506.4, R. C. M. 1947, enacted as sections 2 and 3 of chapter 164, Laws of 1965, relating to rules for determining resident status of university students, to enlarge the definition of persons presumed to be residents.

CHAPTER 7—MONTANA STATE UNIVERSITY—MONTANA WOOL LABORATORY—AGRICULTURAL EXPERIMENT STATIONS

Section 75-706. Designation of station as beneficiary—income from sale of products.
75-723. Disposal of moneys received by laboratory.

75-706. (894) **Designation of station as beneficiary—income from sale of products.** Until otherwise provided by law the agricultural experiment station, now established at Bozeman, Gallatin county, state of Montana, shall be the beneficiary of the funds in said act mentioned, and shall use and disburse said funds only for the purposes and in the manner provided in said act. The treasurer of the executive board of the agricultural college and agricultural experiment station, at said city of Bozeman, is hereby authorized to receive and shall be the custodian of said funds, and he shall account for said funds and make reports to the secretary of agriculture, as required by said act of Congress.

Any income received from the sale of agricultural products by the agricultural experiment station at Bozeman or by any of the agricultural substations shall be deposited in the state treasury and shall be used to defray the costs of operating the station and substations.

History: En. Sec. 2, Ch. 64, L. 1907; Sec. 741, Rev. C. 1907; re-en. Sec. 894, R. C. M. 1921; amd. Sec. 235, Ch. 147, L. 1963.

Amendment

The 1963 amendment added the second paragraph.

75-723. Disposal of moneys received by laboratory. All moneys collected by the Montana wool laboratory shall be paid to the state treasurer and used by the wool laboratory for the payment of salaries and expenses, including purchase of equipment and supplies, and erection of necessary buildings.

In addition, there is hereby appropriated for the Montana wool laboratory, all federal funds which may by the federal government be provided for the maintenance and operation of said Montana wool laboratory and also all funds which may be received by said laboratory or for its use and benefit for special purposes incident to, and in harmony with the purpose of said laboratory.

History: En. Sec. 10, Ch. 166, L. 1945; amd. Sec. 238, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the former first paragraph, for text of which see parent volume; and, in the present first paragraph, substituted "used by the wool laboratory for" for "by him shall be set aside in a special trust fund, from which fund there is hereby appropriated for the use of said wool laboratory as much thereof as may be necessary for."

CHAPTER 8—MONTANA GRAIN INSPECTION LABORATORY

Section 75-807. Fees chargeable for making tests.
75-811. Disposition of fees and annual report of expenditures.

75-807. (908) **Fees chargeable for making tests.** Samples of wheat sent in by individuals, the results from the testing of which samples are of no general or market value, shall be charged a fee sufficient to cover the cost of making the test. Fees so collected are to be deposited in the earmarked revenue fund to be used in support of the laboratory.

History: En. Sec. 7, Ch. 119, L. 1913; re-en. Sec. 908, R. C. M. 1921; amd. Sec. 236, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "in the earmarked revenue fund" for "in a fund in charge of the director of the experiment station" in the second sentence; and deleted a third sentence reading, "Any surplus remaining in this fund at the close of the state's biennium shall be turned over to the state treasurer and shall revert to the state general fund."

75-811. (912) **Disposition of fees and annual report of expenditures.** All fees collected by the Montana grain inspection laboratory for the tests conducted shall be deposited in the earmarked revenue fund to be used in the support of the laboratory. A full report of the expenditures of the laboratory with a statement of the source of the income, whether from state appropriations or from fees collected, shall be made a part of the annual report.

History: En. Sec. 9, Ch. 54, L. 1917; re-en. Sec. 912, R. C. M. 1921; amd. Sec. 237, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "in the earmarked revenue fund" for "in a fund in charge of the director of the laboratory" in the first sentence; and deleted a former third sentence reading, "Any surplus remaining at the close of the state's biennium shall be turned over to the state treasurer and shall revert to the general fund of the state."

CHAPTER 13—THE PUBLIC SCHOOLS—SUPERINTENDENT OF PUBLIC INSTRUCTION

Section 75-1301. Election, qualification, oath.
75-1315. Apportionment of school interest and income moneys.

75-1301. (931) **Election, qualification, oath.** There shall be chosen by the qualified electors of the state, at the time and place of voting for members of the legislature, a superintendent of public instruction, who shall have attained the age of thirty years at the time of his election, and shall have resided within the state two years next preceding his election, and is the holder of a state certificate of the highest grade, issued in some state, and recognized by the state board of education, or is a graduate of some university, college, or normal school recognized by the state board of education as of equal rank with a unit of the university of Montana. He shall hold his office at the seat of government for the term of four years from the first Monday in January following his election, and until his successor is elected and qualified. Before entering upon his duties, he shall take the oath of a civil officer.

History: En. Sec. 1700, Pol. C. 1895; re-en. Sec. 805, Rev. C. 1907; amd. Sec. 200, Ch. 76, L. 1913; re-en. Sec. 931, R. C. M. 1921; amd. Sec. 33, Ch. 177, L. 1965.

Amendment

The 1965 amendment substituted "a unit of the university of Montana" at the end of the first sentence for "the university of Montana or the state normal school"; deleted from the end of the section a clause reading, "and give bond in the penal sum of three thousand dollars, with not less than two sureties, to be approved by the governor and attorney general"; and corrected a typographical error going back at least to the 1935 Revised Codes.

75-1313. (943) County superintendents.

Appeal from Superintendent's Decision

While this section gives the state superintendent of public instruction the power to "decide all appeals from the decisions of the county superintendent," section 75-1518 allows an appeal from the superintendent's decision to the state courts. Potter v. Miller, 145 M 197, 399 P 2d 994.

Grounds for Appeal

Where state superintendent of public instruction approved county superintendent's attachment under section 75-1522 of abandoned territory to a contiguous district rather than to another more convenient one, thus requiring children to travel fourteen miles farther each way to get to more overcrowded schools and worked an "undue hardship" on both parents and children, this constituted sufficient facts for appeal from state superintendent's decision as authorized by section 75-1518. Potter v. Miller, 145 M 197, 399 P 2d 994.

75-1315. (945) Apportionment of school interest and income moneys. He shall, between the first and tenth day of February of each year, apportion the state school interest and income moneys among the several counties of the state, in proportion to the number of children of school age in each as shown by the last enumeration authorized by law. It shall be the duty of the state board of land commissioners to order a warrant drawn on or before the tenth day of January of each year in the amount of the state school interest and income moneys subject to apportionment. The state treasurer shall certify such apportionment to the several county treasurers not later than the first Monday in March; provided, that the several county treasurers have fully complied with section 84-4401, in which case the county treasurers, upon receiving notice from the state treasurer of the amounts due their counties from state school interest and income moneys, may deduct said amount from the amount found due the state by their counties and remit the balance to the state treasurer. The superintendent of public instruction shall certify to the county superintendent of schools of each county, the amount apportioned to that county.

History: En. Sec. 1714, Pol. C. 1895; re-en. Sec. 819, Rev. C. 1907; re-en. Sec. 202, Ch. 76, L. 1913; re-en. Sec. 945, R. C. M. 1921; amd. Sec. 226, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "state school interest and income moneys" for "state school fund" in three places; substituted "order a warrant drawn" in the second sentence for "notify the state auditor"; deleted from the end of the second sentence a clause reading, "and the said auditor, immediately upon receipt of such notification, shall issue his warrant on the state treasurer for the said amount"; and made minor changes in phraseology.

CHAPTER 15—COUNTY SUPERINTENDENT OF SCHOOLS

75-1518. (966) Controversies.

Appeal from Superintendent's Decision

Besides section 75-1313, which gives the state superintendent of public instruction the power to "decide all appeals from the decisions of the county superintendent," this section allows an appeal from the superintendent's decision to the state courts. Potter v. Miller, 145 M 197, 399 P 2d 994.

Consolidation Election

School elections and procedures therefor are not administrative matters governed by this section and the validity of such elections is determined by the laws of general elections as set forth in section 23-1704. Woolsey v. Carney, 141 M 476, 378 P 2d 658.

Grounds for Appeal

Where state superintendent of public instruction approved county superintendent's attachment under section 75-1522 of abandoned territory to a contiguous district rather than to another more convenient one, thus requiring children to travel fourteen miles farther each way to get to more overcrowded schools and worked an "undue hardship" on both parents and children, this constituted sufficient facts for appeal from state superintendent's decision as authorized by this section. Potter v. Miller, 145 M 197, 399 P 2d 994.

75-1522. (970) Abandonment of school districts.

Grounds for Review

The fact that a district is contiguous is not the only requirement for attaching an abandoned district to it, so that where parents sought to have abandoned territory attached to another contiguous district from one to which it had been attached by the county superintendent and approved by the state superintendent of public instruction, thus requiring children to travel fourteen miles farther each way to get to more overcrowded schools and worked an "undue hardship" on both parents and children, there were sufficient facts alleged in the petition to move the discretion of the district court to grant a writ of review. Potter v. Miller, 145 M 197, 399 P 2d 994.

References

Woolsey v. Carney, 141 M 476, 378 P 2d 658.

CHAPTER 16—SCHOOL TRUSTEES

Section 75-1604. Elections in districts of second and third class—nominations.
75-1614. Vacancy in school board.
75-1618. Qualifications of electors.
75-1620. Expenses of election.
75-1621. Organization.
75-1622. Meetings.
75-1630. Transfer of funds.
75-1632. Duties of trustees.
75-1637. Letting contracts and furnishing supplies, trustees not to be interested in—advertising for bids required, when.
75-1641. Transportation of pupils living near school—charges to parents—preference to children farthest from school.
75-1642. Regular bus routes not used to capacity to be used.
75-1643. Standards for vehicles and drivers.
75-1644. Budgeting and accounting for reimbursable transportation.
75-1645. Purchase of liability insurance authorized—payment of premiums.

75-1604. (988) Elections in districts of second and third class—nominations. In districts of the second and third class, the names of all candidates for membership on the school board must be received and filed by the clerk and posted at each polling place at least twenty days next preceding the election. Any five qualified electors of the district may file with the clerk the nominations of as many persons as are to be elected to the school board at the ensuing election.

History: En. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 988, R. C. M. 1921; amd. Sec. 1, Ch. 46, L. 1965.

Amendment

The 1965 amendment changed the date specified at the end of the first sentence from five to twenty days before the election.

References

State ex rel. Running v. Jacobson, 140 M 221, 370 P 2d 483, 485.

75-1605. (989) **Conduct of election.**

Validity of School Election

The validity of school elections is determined by the laws of general elections as set forth in section 23-1704. Woolsey v. Carney, 141 M 476, 378 P 2d 658.

References

State ex rel. Running v. Jacobson, 140 M 221, 370 P 2d 483, 485.

75-1608. (992) **Board of trustees to call election—notice of.**

References

State ex rel. Running v. Jacobson, 140 M 221, 370 P 2d 483, 485.

75-1612. (996) **Poll and tally list, certificate of judges, etc.**

Withdrawal of Votes

Where the judge's intentional withdrawal of five votes "for consolidation," rather than drawing by lot as required by this section, left the result of the election doubtful, then the election was void. Woolsey v. Carney, 141 M 476, 378 P 2d 658.

75-1614. (998) **Vacancy in school board.** A vacancy in the office shall be filled by appointment by the county superintendent of schools; except that in districts of the first and second class, such appointment shall be made by a majority of the remaining members of said board, if those remaining constitute a majority of the total number of the board. The trustee so appointed shall hold office until the next annual election, at which election there shall be elected a school trustee for the unexpired term. When any vacancy occurs in the office of trustee of any school district by death, resignation, failure to elect at the proper time, removal from the district, or other cause, the fact of such vacancy shall be immediately certified by the clerk of the school district, to the county superintendent, or to the remaining members of the board in districts of first or second class, and the county superintendent, or the remaining members of the board in districts of first or second class, shall immediately appoint in writing, some competent person, who shall qualify and serve until the next annual school election. The county superintendent or the board shall at the time notify the clerk of the school district of every such appointment; provided, that absence from the school district for sixty consecutive days, or failure to attend three consecutive meetings of the board of trustees without good excuse, shall constitute a vacancy in the office of trustee.

History: Ap. p. Sec. 1782, Pol. C. 1895; amd. Sec. 13, p. 143, L. 1897; Secs. 862 and 1019, Rev. C. 1907; amd. Sec. 502, Ch. 76, L. 1913; amd. Sec. 11, Ch. 196, L. 1919; re-en. Sec. 998, R. C. M. 1921; amd. Sec. 1, Ch. 275, L. 1967.

Amendments

The 1967 amendment substituted "except" for "provided" after "superintendent of schools" and substituted "made" for "subject to confirmation" before "by a majority" in the first sentence; substituted "by the clerk of the school district * * * of the first or second class" for "to the county superintendent by the clerk of the school district, and the county superintendent" after "immediately certified" in the third sentence; and inserted "or the board" after "county superintendent" in the last sentence of this section.

75-1618. (1002) **Qualifications of electors.** Every citizen of the United States of the age of twenty-one years or over who has resided in the state of Montana for one year, and thirty days in the school

district next preceding the election, and who is a registered voter, may vote thereat.

History: En. Sec. 1777, Pol. C. 1895; amd. Sec. 8, p. 138, L. 1897; re-en. Sec. 857, Rev. C. 1907; amd. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 1002, R. C. M. 1921; amd. Sec. 1, Ch. 83, L. 1939; amd. Sec. 1, Ch. 65, L. 1941; amd. Sec. 1, Ch. 143, L. 1965.

Amendment

The 1965 amendment inserted "and who is a registered voter" near the end of the section.

75-1620. (1004) **Expenses of election.** All the expenses necessarily incurred in the matter of holding any and all elections for school trustees, extra levies, bonds, school sites, disposal of property, or any other election provided by law in any school district, high school building district, or county high school, shall be paid out of the general school funds of the district, or in the case of a high school building district, out of the high school general funds; or in the case of county high schools, out of the county high school general fund. In its discretion, the board of trustees may pay judges of any such election at a rate not to exceed one dollar ($1) per hour of service in connection with any such election.

History: Ap. p. Sec. 14, p. 145, L. 1897; re-en. Sec. 866, Rev. C. 1907; amd. Sec. 502, ch. 76, L. 1913; re-en. Sec. 1004, R. C. M. 1921; amd. Sec. 1, Ch. 104, L. 1963.

Repealing Clause

Section 2 of Ch. 104, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1963 amendment substantially rewrote this section. For previous text, see parent volume.

Effective Date

Section 3 of Ch. 104, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

75-1621. (1005) **Organization.** The school trustees shall meet annually after due and legal notice at a time between the school trustee election and on or before the third Saturday in April and organize by choosing one of their number chairman, and a competent person, not a member of the board, as clerk. The chairman shall preside at all the meetings of the board, and shall perform such duties as usually pertain to such officer, and in accordance with the customary rules of order.

History: Ap. p. Sec. 1793, Pol. C. 1895; amd. Sec. 4, p. 59, L. 1899; re-en. Sec. 871, Rev. C. 1907; amd. Sec. 504, Ch. 76, L. 1913; re-en. Sec. 1005, R. C. M. 1921; amd. Sec. 1, Ch. 46, L. 1967.

Amendments

The 1967 amendment inserted "after due and legal notice at a time between the school trustee election and on or before" after "annually" in the first sentence.

75-1622. (1006) **Meetings.** The board shall hold, in districts of the first class, at least one and not more than five meetings each month for the transaction of its business; and in all districts at least four meetings each year shall be held, to wit: On the third Saturdays of April, July, October and January, at such places and hours as shall be fixed by the board. A special meeting of the board may be held upon the call of the chairman or any two members of the board; at least forty-eight hours' written notice shall be given to each member of the board of any special meetings, and no business transacted by the board shall be

valid unless transacted at a regular or special meeting thereof. All school trustees regularly qualified for office in first, second, and third class districts, including the extra high school trustees provided for in section 75-4601, R.C.M. 1947, who live three (3) miles from the meeting place shall be entitled to mileage at the rate of eight cents (8¢) per mile for travel from their homes to the meeting place and return, for attendance at all regular and special meetings of the board of trustees held according to law. The payment for mileage may accumulate until the end of the fiscal year at the discretion of the trustee.

History: Ap. p. Sec. 1794, Pol. C. 1895; amd. Sec. 5, p. 59, L. 1899; re-en. Sec. 872, Rev. C. 1907; amd. Sec. 505, Ch. 76, L. 1913; re-en. Sec. 1006, R. C. M. 1921; amd. Sec. 1, Ch. 264, L. 1967.

Amendments

The 1967 amendment added the last two sentences to this section.

Failure to Meet

Where record showed that there was no meeting of the school board, either special or regular, as required by this section, prior to schoolteacher being summarily fired on ground of incompetency pursuant to section 75-2411, board's dismissal of teacher was void for want of jurisdiction. Wyatt v. School District No. 104, — M —, 417 P 2d 221, 223, 225.

75-1630. (1013) Transfer of funds. Children may attend public elementary schools in districts in the county outside of the district in which they reside, or in a district in an adjoining county, or in a district in a county in another state when the district in such other state adjoins the district in which they reside, or is situated in a county in such other state, which county adjoins the state of Montana, when written permission is secured from the board of trustees of the district in which they reside, the board of trustees of the district in which they are to attend school, and when written permission has been given by the county superintendents of schools of the counties concerned. Permission must be granted for such attendance in another district within or without the county of such children's residence when the following conditions exist:

1. When a child lives less than three (3) miles from a public elementary school in another district or county and three (3) or more miles from a public elementary school in the district or county of his own residence.

2. When a child resides more than three (3) miles distance from a public elementary school within his own district or county and no transportation is furnished by the home district or county to such school.

3. When regular bus transportation is furnished by a public elementary school in another district or county and his own district or county does not furnish transportation.

Such distances mentioned above shall be measured from the point where the private family dwelling house is situated to the schoolhouse by the shortest traveled route.

4. When a family has children who must attend high school outside of its own district or county and such family also has elementary school children who can more conveniently attend the elementary grades in the same district where the high school is located, provided such elementary children live more than three (3) miles from the home school or that a

parent must move to town to provide high school education for his children.

5. When the county superintendent of schools of the county where the child resides, for any other reason than stated above shall approve the attendance of any child in a public elementary school in another county. In approving such attendance in another district or county, the county superintendent shall take in consideration such items as distance to school, road conditions, trading center of parents, opportunity to live with relatives, dormitory facilities, living conditions, transportation and type of educational program.

If the board of trustees of the district to be attended shall find that, due to insufficient room and overcrowding the accreditation of the receiving school in the ensuing school year would be adversely affected by acceptance of a transfer pupil from another school district, the board may disapprove the attendance provided it mails written notice of disapproval to the parents or guardian of the pupil within fifteen (15) days after written notification by the county superintendent of the proposed attendance.

In the event that the residence, for determining tuition obligations, of such child is in dispute, then the rules for determining residence as outlined in section 83-303, shall be used by the county superintendent of the county of the child's residence, or in case the dispute is between districts of two (2) counties by the county superintendents of such counties, to finally determine the residence of such child.

When approval of attendance in another district within or without the county has been granted, the district in which such child resides shall pay to the school district where such child attends, an amount based on the following tuition rates: in the case of attendance at an elementary school with an average number belonging up to one hundred (100), the tuition to be paid shall be two hundred seventy-five dollars ($275); where the school attended has an average number belonging between one hundred one (101) and three hundred (300), the tuition shall be two hundred and fifty dollars ($250); and where the school attended has an average number belonging over three hundred (300), the tuition rate shall be two hundred twenty-five dollars ($225) per pupil.

It is hereby made the duty of the board of school budget supervisors in approving the budgets, to include therein an item to care for the above tuition, if this has not already been done by the board of trustees in preparing the budget for the district.

Applications for permission to attend a school outside the district or county shall be made to the county superintendent before July 1, previous to the year of attendance, excepting in those cases where circumstances prevent such application. These applications are to be approved or disapproved, except as otherwise provided by law, by the county superintendents concerned, by the trustees of the district in which the pupil resides, and by the trustees of the district the pupil wishes to attend. However, nothing in this section shall be so construed as to deny a parent whose children cannot qualify under this section the right to send

his children, at his own expense, to a public elementary school of any other district willing to accept them. Such parent must pay to the receiving district, tuition in the amount set forth herein, provided, however, if a parent of the child is a property taxpayer on the last completed assessment rolls in the receiving district and has paid school taxes in an amount of two hundred ($200) dollars or more, the board of trustees of the receiving district shall waive any and all tuitions.

At the close of the school term of the year in which such pupil attends this school outside the district, the clerk of such district shall transmit to the county superintendent the names of pupils from other districts attending his school, together with the number of days attended. This information in turn shall be transmitted by the county superintendent to the districts affected and such district shall reimburse the school attended for all pupils of its district; provided such pupil has attended at least forty (40) days. This amount of reimbursement shall be made an item of the budget for the coming year and reimbursement shall be made to the district of attendance out of the first funds available to the budget; provided, however, that the trustees of the district receiving pupils from another district may waive any or all tuition; provided, however, that such waiver must apply equally to all pupils, and provided, further, that the amount of this tuition shall not reduce the foundation program of the school paying it, but shall be an additional item added to it to be raised without a vote of the people; and provided further, that the district receiving the tuition may apply it against the needs of the budget after the regular district, county and state aid have been received.

In the case of a district which does not operate a school, the amount of this tuition can be raised without a vote of the people if the five (5) mill district levy and other local revenue is insufficient to raise the amount needed.

It shall be the responsibility of the superintendent of schools and the boards of trustees of the public elementary schools sending and receiving the pupils and the county superintendents of the schools concerned to determine and agree upon eligibility of pupils transferring under the provisions of this act; provided, that an appeal may be taken to the state superintendent of public instruction.

Whenever elementary pupils residing in Montana are approved for attendance in an elementary school in an adjoining state; and whenever elementary pupils in an adjoining state are approved for attendance in an elementary school in Montana, the above schedule of tuition payments may be waived and payments arrived at on a reciprocal basis with the state involved. The state superintendent of public instruction is hereby authorized to negotiate with the state superintendent of public instruction of each state involved in arriving at tuition payments, which may either be on a per pupil basis of a flat amount or on an actual cost basis.

Whenever a child has been declared by a district court of the state of Montana a dependent and neglected child as defined in section 10-501, or a juvenile delinquent child, as defined in section 10-602, and has been ordered to be placed in a duly licensed child care institution in the

state of Montana, which institution is approved by the state department of public welfare, and as a result of such order such child is required to attend a public elementary school in a school district outside of the district in which he resides, the district receiving such pupil shall be entitled to receive tuition on the basis of the schedule established in this act, provided that the geographical relationship of the receiving district to the district of residence shall be of no consequence. All other provisions of this section, excepting solely the geographical relationship of the districts, shall be applicable to the payment of tuition for the education of such child.

History: En. Sec. 507, Ch. 76, L. 1913; amd. Sec. 12, Ch. 196, L. 1919; re-en. Sec. 1013, R. C. M. 1921; amd. Sec. 1, Ch. 109, L. 1929; amd. Sec. 2, Ch. 217, L. 1939; amd. Sec. 1, Ch. 203, L. 1943; amd. Sec. 2, Ch. 207, L. 1951; amd. Sec. 1, Ch. 21, L. 1953; amd. Sec. 1, Ch. 99, L. 1959; amd. Sec. 1, Ch. 228, L. 1961; amd. Sec. 1, Ch. 107, L. 1963; amd. Sec. 1, Ch. 176, L. 1963; amd. Sec. 1, Ch. 251, L. 1963; amd. Sec. 1, Ch. 127, L. 1965; amd. Sec. 1, Ch. 225, L. 1967; amd. Sec. 1, Ch. 322, L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 225 and once by Ch. 322. Neither amendatory act referred to or incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section embodying the amendments made by both 1967 acts.

Amendments

Chapter 107, Laws 1963, added the final paragraph.

Chapter 176, Laws 1963, added the third and fourth sentences to the fifth paragraph after the numbered paragraphs; and inserted the words "provided, however, that such waiver must apply equally to all pupils, and" in the third sentence of the sixth paragraph after the numbered paragraphs.

Chapter 251, Laws 1963, inserted the first paragraph after the numbered paragraphs.

The 1965 amendment adopted the changes made by all three 1963 acts; and increased tuition by $50 in each of the three classes of schools mentioned in the third paragraph after the numbered paragraphs.

Chapter 225, Laws 1967, inserted "the board of trustees of the district in which they reside" after "permission is secured from," and substituted "counties concerned" for "county in which the children reside" after "of the schools of the" in the first sentence of the first paragraph; inserted "concerned, by the trustees of the district in which the pupil resides" after "the county superintendents" in the second sentence of the fifth paragraph after the numbered paragraphs; inserted "sending and" before "receiving" and substituted "the schools concerned" for "schools of the county of the pupils' residence" before "to determine and agree" in the eighth paragraph after the numbered paragraphs; and made minor changes in phraseology and punctuation.

Chapter 322, Laws 1967, added the proviso at the end of the fifth paragraph after the numbered paragraphs.

Effective Dates

Section 2 of Ch. 107, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

Section 2 of Ch. 322, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 3, 1967.

75-1632. (1015) Duties of trustees. Every school board unless otherwise specially provided by law shall have power and it shall be its duty:

1 to 6. * * * [Same as parent volume.]

7. To repair and insure schoolhouses and to rent, lease and let to such persons or entities as the board may deem proper, the grade school halls, gymnasium and buildings, school owned employee housing and part thereof for such time and rental as the board may designate. All rentals shall be paid to the county treasurer for the credit of the school district. Such rentals may be credited to the school housing or rental fund of the district, the general school fund of the district or used to

retire outstanding bonds issued by the district. Provided, however, that any expense incurred due to such rentals may be paid out of said rental or housing account, and provided further that any balance in such fund over three thousand dollars ($3,000) at the end of the school year shall be transferred to the general fund.

8 to 10. * * * [Same as parent volume.]

11. When deemed advisable, to employ a physician or registered nurse to make inspection into the sanitary conditions of the school and the general health conditions of each pupil, and to make a full, detailed report to the board of trustees. The clerk of the district shall furnish immediately to each parent or guardian a copy of such portion of the above mentioned report as pertains to his child or ward.

12 to 24. * * * [Same as parent volume.]

History: Earlier acts governing the duties of trustees were the following: Sec. 27, p. 625, Cod. Stat. 1871; re-en. Sec. 26, p. 126, L. 1874; re-en. Sec. 1113, 5th Div. Rev. Stat. 1879; amd. Sec. 6, p. 55, L. 1883; amd. Sec. 1885, 5th Div. Comp. Stat. 1887; amd. Sec. 1797, Pol. C. 1895; amd. Sec. 5, p. 130, L. 1897; re-en. Sec. 875, Rev. C. 1907. The above section was enacted as Sec. 508, Ch. 76, L. 1913; Subds. 1-10 were amended by Sec. 1, Ch. 61, L. 1917; Subd. 11 amd. by Sec. 1, Ch. 61, L. 1917, and Sec. 13, Ch. 196, L. 1919; Subds. 12-13-14 re-en. Sec. 1, Ch. 61, L. 1917; Subd. 15 was amd. by Sec. 1, Ch. 61, L. 1917, and by Sec. 2, Ch. 81, L. 1917; Subds. 16-17-18 re-en. Sec. 1, Ch. 61, L. 1917; Subds. 19-20-21-22 re-en. Sec. 1, Ch. 61, L. 1917; re-en. Sec. 1015, R. C. M. 1921; amd. Sec. 1, Ch. 122, L. 1923; amd. Sec. 1, Ch. 122, L. 1931; amd. Sec. 1, Ch. 165, L. 1937; amd. Sec. 1, Ch. 103, L. 1943; amd. Sec. 3, Ch. 207, L. 1951; amd. Sec. 1, Ch. 233, L. 1953; amd. Sec. 1, Ch. 228, L. 1955; amd. Sec. 1, Ch. 168, L. 1959; amd. Sec. 1, Ch. 105, L. 1961; amd. Sec. 1, Ch. 76, L. 1963; amd. Sec. 1, Ch. 175, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 76 and once by Ch. 175. Neither amendatory act mentioned nor included the changes made by the other. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 76, Laws 1963, deleted the words "To provide clothing and medical aid for indigent children when it shall be made to appear that such aid is needed; and" which appeared at the beginning of subd. 11.

Chapter 175, Laws of 1963, inserted the words "school owned employee housing" in the first sentence of subd. 7; and added the third and fourth sentences to subd. 7.

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

75-1637. (1016) **Letting contracts and furnishing supplies, trustees not to be interested in—advertising for bids required, when.** It shall be unlawful for any school trustee to have any pecuniary interest, either directly or indirectly, in the erection of any schoolhouses, or for warming, ventilating, furnishing, or repairing the same, or be in any manner connected with the furnishing of supplies for the maintenance of the schools, or to receive or to accept any compensation or reward for services rendered as trustees, except as hereinbefore provided. No board of trustees shall let any contract for building, furnishing, repairing, or other work, for the benefit of the district, without first advertising in a newspaper published in the county for at least two (2) weeks, calling for bids to perform such work, except:

(a) A board of trustees of third class school districts maintaining one (1) or two (2) room elementary schools, may contract, without adver-

tising and without bids, where the amount involved is not more than eight hundred dollars ($800);

(b) A board of trustees of third class school districts, other than those mentioned in subparagraph (a) may contract, without advertising and without bids, where the amount involved is not more than fifteen hundred dollars ($1,500);

(c) A board of trustees of districts of the first and second class, may contract without advertising and without bids where the amount involved is not more than two thousand five hundred dollars ($2,500);

In all cases where advertising is required, the board shall award the contract to the lowest responsible bidder; provided, however, that the board of school trustees shall have the right to reject any and all bids.

History: Ap. p. Sec. 1802, Pol. C. 1895; re-en. Sec. 882, Rev. C. 1907; amd. Sec. 1, Ch. 32, L. 1909; amd. Sec. 509, Ch. 76, L. 1913; re-en. Sec. 1016, R. C. M. 1921; amd. Sec. 1, Ch. 44, L. 1955; amd. Sec. 1, Ch. 57, L. 1967.

Amendments

The 1967 amendment substituted "eight hundred dollars ($800)" for "four hundred dollars ($400.00)" at the end of subdivision (a); substituted "fifteen hundred dollars ($1,500)" for "seven hundred and fifty dollars ($750.00)" at the end of subdivision (b); and deleted "maintaining elementary schools only" after "second class" and substituted "two thousand five hundred dollars ($2,500)" for "one thousand two hundred and fifty dollars ($1,250.00)" in subdivision (c).

75-1641. Transportation of pupils living near school—charges to parents—preference to children farthest from school. The board of trustees of any school district or county high school is authorized to provide school bus transportation to pupils who live less than three (3) miles distant from a public school and for this purpose the board may make such charges of parents, guardians or other representatives of pupils as may be necessary to pay the costs of providing such transportation, providing, however, the trustees shall in making such agreements give preference to those children living the farthest from the school to be attended.

History: En. Sec. 1, Ch. 249, L. 1965.

Title of Act

An act to authorize school boards of trustees to provide transportation for pupils living less than three miles from school; providing standards for vehicles and drivers; and providing a fund to account for moneys collected and disbursed under the act.

75-1642. Regular bus routes not used to capacity to be used. The board of trustees may allow such pupils to be transported on such school buses as may be regularly scheduled on state-approved school bus routes and which are not filled to approved capacity by pupils residing three (3) or more miles distant from a public school, or on such other school buses as may be designated for transportation in accordance with this act.

History: En. Sec. 2, Ch. 249, L. 1965.

75-1643. Standards for vehicles and drivers. All school bus vehicles and drivers utilized under the provisions of this act shall meet the minimum standards set forth in section 75-3308, R. C. M. 1947.

History: En. Sec. 3, Ch. 249, L. 1965.

75-1644. Budgeting and accounting for reimbursable transportation. The transportation fund of the school budget shall be utilized for the

purpose of budgeting and accounting for all collections of charges and fees authorized by this act. Such moneys shall be accounted for separately from public moneys.

History: En. Sec. 4, Ch. 249, L. 1965.

75-1645. Purchase of liability insurance authorized—payment of premiums. (1) The board of trustees of a school district, county high school, junior college, or community college may purchase insurance coverage for the school district, school officials, and employees against liability for the death, injury or disability of any person or damage to property.

(2) If insurance is purchased as authorized by this act, the board of trustees shall pay the insurance premium costs out of the school general fund.

(3) That the provisions of section 40-4402, the Revised Codes of Montana 1947, are applicable to this act.

History: En. Sec. 1, Ch. 58, L. 1967.

Title of Act

An act to authorize the board of trustees of a school district, county high school, junior college, or community college to purchase liability insurance for the death, injury, or disability of any human being or for damage to property.

CHAPTER 17—BUDGET SYSTEM

Section 75-1706. Preparation and adoption of preliminary budget.
75-1713.1. Changes in budget by budget board when in excess of foundation program—restrictions on budgets.
75-1716. Emergency budgets.
75-1719. Issuance of emergency warrants.
75-1720. Statement of total of emergency warrants—tax levy.
75-1723. Fixing tax levy.

75-1706. (1019.6) **Preparation and adoption of preliminary budget.** At the regular meeting of the board of trustees of each school district on the fourth Monday in June such board must consider, prepare and adopt a preliminary budget for the next ensuing school year. Any taxpayer in the district may appear at such meeting and be heard in regard to the preliminary budget or any item or amount proposed to be included therein. Such meeting may be continued from day to day, but not exceeding three (3) days in all; provided, that in first and second class districts such meeting may be continued over a period of not more than five (5) days. When the board has determined the amount necessary to be expended for each item contained in such budget form there shall be entered in column 2 of section I and in column 2 of section II of the budget form the amount proposed to be expended during the ensuing fiscal year for each item contained in such form, and such preliminary budget shall then be signed by a majority of the trustees and the clerk of the district, and the clerk of the district must deliver or transmit such preliminary budget, when so filled in and signed, to the county superintendent of schools on or before the first day of July. If the estimated expenditures set forth in either lines 2 or 4 shall provide for payment of salary or compensation to more than one (1) person, there shall be set

forth on a separate sheet but attached to and made a part of such preliminary budget, each position or employment with the salary or compensation to be paid to each person filling the same.

The elementary school budget for any school district in which no elementary school will be operated in the next ensuing school year shall consist of a single budget for the nonoperating fund, which fund shall incorporate all previously existing funds of the school district. Such budget for the nonoperating fund shall include all budgeted items of the district for the ensuing year, including any tuition payments to be made to the other districts, any transportation obligations, any maintenance of school district property and any other items deemed necessary by the board of trustees of the school district.

History: En. Sec. 6, Ch. 146, L. 1931; amd. Sec. 2, Ch. 63, L. 1941; amd. Sec. 1, Ch. 182, L. 1963.

Amendment

The 1963 amendment added the second paragraph.

75-1713.1. Changes in budget by budget board when in excess of foundation program—restrictions on budgets. If the total amount of the proposed elementary general fund expenses in the preliminary budget of any district shall exceed the foundation program of such district, the budget board shall, in the manner and subject to the limitations prescribed by section 75-1713, reduce such proposed general fund expenses to a total equal to said foundation program unless the board of trustees of said district shall establish to the satisfaction of the budget board that special circumstances exist which justify such additional expenses, and in such event a statement of the reasons for the allowance of such additional expenses shall be attached to said budget and signed by the chairman of the budget board, but the entire amount of such excess expense over the foundation program shall be paid solely from levies upon the property in such district and shall not in any manner increase the amounts to be apportioned hereunder from the county common school levy or from the moneys available for state equalization aid; and provided, that, except in the case of the existence of the emergencies specified in section 75-1716, the entire amount of such additional expense over the foundation program plus the foundation program to be included in the budget of any district shall not be greater than the maximum amounts in accordance with the following schedules: provided that nothing herein contained shall be construed as preventing the voting of an additional levy in accordance with the general school laws pertaining to the voting of additional levies.

Elementary Schools

(1) For each elementary school having an ANB of nine (9) or fewer pupils, the maximum shall be sixty-four hundred seventy-two dollars ($6,472), if said school is approved an as [as an] isolated school.

(2) For schools with an ANB of ten (10) pupils, but less than eighteen (18) pupils, the maximum shall be sixty-four hundred seventy-two dollars ($6,472) plus one hundred ninety-one dollars ($191) per pupil on the basis of the average number belonging over nine (9).

(3) For schools with an ANB of eighteen (18) pupils and employing one (1) teacher, the maximum shall be eighty-one hundred eighty-

seven dollars ($8,187) plus seventy-six dollars ($76) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB over twenty-five (25).

(4) For schools with an ANB of eighteen (18) pupils and employing two (2) full-time teachers, the maximum shall be fourteen thousand seven hundred four dollars ($14,704) plus seventy-six dollars ($76) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB over fifty (50).

(5) For schools having an ANB in excess of forty (40) the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

For a school having an ANB of more than forty (40) and employing a minimum of three (3) teachers, the maximum of five hundred eighteen dollars ($518) shall be decreased at the rate of thirty-nine cents ($.39) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of four hundred ninety-five dollars ($495) shall be decreased at the rate of forty-six cents ($.46) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum shall not exceed four hundred two dollars and twenty-five cents ($402.25) for each pupil; provided that the maximum per pupil, for all pupils, ANB, shall figure on the basis of the amount allowed herein on account of the last eligible pupil, ANB, and provided further that all schools operated within the incorporated limits of a city or town shall be treated as a school unit for the purpose of this schedule.

The maximum per pupil for all pupils (ANB) and for all schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB.

History: En. Sec. 9, Ch. 199, L. 1949; amd. Sec. 1, Ch. 208, L. 1951; amd. Sec. 1, Ch. 267, L. 1963; amd. Sec. 1, Ch. 198, L. 1965; amd. Sec. 1, Ch. 317, L. 1967.

Amendments

The 1963 amendment substituted "moneys available for state equalization aid" for "state public school equalization fund" immediately before the first proviso; inserted "plus the foundation program" before "to be included in the budget" in the first proviso; substituted "the maximum amounts in accordance with the following schedules" at the end of the first proviso for "thirty per cent (30%) of the foundation program of any school"; and added everything after the first paragraph.

The 1965 amendment increased the amount specified in paragraph (1) from $5,312 to $5,631; deleted from the end of paragraph (1) clauses reading, "if said school is approved as an isolated school; if said school is not approved as an isolated school, then the maximum shall be twenty-six hundred fifty-six dollars ($2,656.00)"; increased the amounts specified in paragraph (2) from $5,312 plus $156 per pupil to $5,631 plus $165.50 per pupil, in paragraph (3) from $6,716 plus $62.50 per pupil to $7,119 plus $66.25 per pupil, and in paragraph (4) from $12,062 plus $62.50 per pupil to $12,786 plus $66.25 per pupil; increased the maximum specified in the first sentence of the second paragraph of subdivision (5) from $425 to $450.50, in the second sentence of that paragraph from $406 to $430.36, and in the third sentence of that paragraph from $330 to $349.80; increased the rate of decrease specified in the first sentence of the second paragraph of subdivision (5) from 32¢ to 34¢ per pupil, and in the second sentence of that paragraph from 38¢ to 40¢ per pupil; and deleted a former last paragraph, added by the 1963 amendment, which read: "On or before January 1 of odd-numbered years, the state superintendent of public instruction

shall transmit to the legislative assembly of the state of Montana a revised schedule for elementary schools in accordance with classifications by size as set forth in this section. This revised schedule will be based on the median general fund budgeted expenditures for the current year, by ascertaining the median of the general fund budgets for each classification of elementary schools, and the total number of pupils (ANB) for all schools in each classification, and by computing the revised schedule therefrom."

The 1967 amendment increased the maximum general fund budgets under Elementary Schools by substituting in subparagraph (1) $6,472 for $5,631 and adding "if said school is approved as an isolated school"; in subparagraph (2), substituting $6,472 plus the additional rate of $191 per pupil for $5,631 plus $165.50; in subparagraph (3), $8,187 plus $76 for $7,119 plus $66.25; in subparagraph (4), $14,704 plus $76 for $12,786 plus $66.25; and in the second paragraph of subparagraph (5), substituted $518 for $450.50; 39¢ for 34¢; $495 for $430.36; 46¢ for 40¢; and $402.25 for $349.80.

75-1716. (1019.16) **Emergency budgets.** (1) Whenever the board of trustees of a school district maintaining an elementary school or schools, at any time after December 31st of any school year, shall deem that an emergency exists by reason of an increase in the enrollment and attendance over that of the immediately preceding school year over and beyond the extent which such increase might reasonably have been anticipated at the time of the adoption of the budget for the then current school year, and that because of such increase in enrollment and attendance the budget approved and adopted for any or all of the regularly budgeted funds of the school district for the then current school year does not provide sufficient funds to properly maintain and support such school or schools during the whole of the then current school year; or shall at any time during a school year deem that an emergency exists because of the destruction of any school property necessary to the maintenance of school, or its impairment by fire, flood, storm, riot, insurrection or other act of God, to such an extent as to render it unfit or prevent its use for the school purposes for which theretofore used; or because of the entering by a court of competent jurisdiction of a judgment for damages against the district, or the enactment of legislation, after the adoption of the final budget, requiring expenditures not contemplated therein, such board of trustees by unanimous vote of all members of the board present at any meeting, the time and place of holding [of] which all of the trustees shall have had reasonable notice, may adopt and enter upon their minutes a resolution, stating the facts constituting the emergency, the estimated amount of money required to meet such emergency, and the time and place when the board will meet for the purpose of considering and adopting an emergency budget for such current school year.

Whenever such board of trustees shall deem that an emergency exists for any reason other than those reasons specified above, such board may petition the state superintendent of public instruction for permission to adopt a resolution of emergency. Such petition shall set forth in writing the reasons for the request, the school district budget or budgets affected by the emergency, the estimated amount of money required to meet such emergency for each affected budget, the anticipated source or sources of financing for the emergency expenditures, and such other information as may be required by the superintendent of public instruction. Such petition shall be signed by all of the members of the board of trustees.

The state superintendent of public instruction shall have the power to approve or disapprove such petition. If such petition be approved, the board of trustees may proceed to adopt a resolution of emergency, and may subsequently take all other steps prescribed for meeting an emergency situation due to any of the causes specified above. Approval of such petition by the superintendent of public instruction shall merely authorize the board of trustees to initiate emergency budget proceedings by resolution and shall not relieve such board of trustees of the necessity of complying with the requirements for proceeding according to the provisions of this section and all other laws pertaining to emergency budgets. Approval of such petition shall not be construed as approval of any subsequent application for increased state aid on account of such emergency.

(2) and (3). * * * [Same as parent volume.]

(4) In the event of any other emergency described in this section, the preliminary emergency budget shall state the amount to be appropriated therein as definitely as possible the details of the proposed expenditures of the appropriation.

(5) The board of trustees may adopt an emergency budget for any or all of the budgeted funds of the school district, for which fund or funds a regular budget has been approved and adopted for the current year in accordance with the provisions of section 75-1712.

(6) Whenever the board of trustees shall prepare an emergency budget for the transportation fund, such emergency budget shall be so itemized as to show the amount appropriated therein separately for bus transportation and for payments to parents or guardians in lieu of bus transportation. The board of trustees shall attach to such emergency transportation budget a copy of each transportation contract connected with the emergency, such contracts to be prepared and executed in accordance with the provisions of section 75-3405.

(7) Whenever the board of trustees shall prepare an emergency budget for the general fund or the transportation fund, or both, due to increased enrollment, such board of trustees may make application to the state superintendent of public instruction for increased payment from the state public school equalization fund for the foundation program, or for state transportation reimbursement, or both. The state superintendent of public instruction shall prepare and publish rules and regulations for such application. The state superintendent of public instruction shall consider all applications for increased state aid made in accordance with the provisions of this act, and shall determine the amount of increase, if any, which shall be made in the payment of funds from the state public school equalization fund for the foundation program, or for state transportation reimbursement, or both, on account of any emergency budget due to increased enrollment. The superintendent of public instruction shall notify the board of trustees of the approval or disapproval of any application for increase in payment of state funds, and in the event of approval the budget or budgets to which such increased payment shall be applied, and the amount or amounts

thereof. The board of trustees shall attach a copy of such notice of approval or disapproval to the preliminary emergency budget.

(8) Three (3) copies of the emergency budget shall be furnished the county superintendent of schools and such county superintendent must lay one (1) copy thereof before the board of county commissioners, which constitutes the board of school budget supervisors for the county, at the next regular meeting of such board. Such board shall have the power to make such change in such budget, if any, as it may deem proper and necessary, and shall then approve such budget, either as adopted by the board of school trustees, or as changed by the board of county commissioners.

History: En. Sec. 16, Ch. 146, L. 1931; amd. Sec. 1, Ch. 193, L. 1943; amd. Sec. 1, Ch. 134, L. 1945; amd. Sec. 1, Ch. 124, L. 1959; amd. Sec. 1, Ch. 147, L. 1965.

Amendment

The 1965 amendment inserted "for any or all of the regularly budgeted funds of the school district" after "the budget approved and adopted" in the first clause of the first paragraph of subsection (1); made another minor change in the first paragraph of subsection (1); added the second and third paragraphs to subsection (1); divided former subsection (4) into present subsections (4) and (8); and inserted new subsections (5), (6), and (7).

75-1719. Issuance of emergency warrants. After the approval of such emergency budget, if the budget is to provide additional funds for the maintenance and support of the school or schools, whenever the amount appropriated for any item in the annual budget for such current school year has been fully used and such appropriation is exhausted, expenditures made thereafter shall be made by emergency warrants against the amount appropriated in the emergency budget, which emergency warrants shall be issued in the same manner and form and subject to the same conditions and provisions as set out in section 75-1726, except that on each thereof shall be distinctly endorsed "ELEMENTARY EMERGENCY WARRANT SCHOOL DISTRICT NO.————————." After deducting from the amount of money standing to the credit of the fund of the school district for which the emergency budget was adopted the amount required to meet and take care of all unexpended appropriations in the annual budget for that fund for the current school year and after deducting the amount required for the reserve, if any, provided in such budget for the following school year, if any balance remains in that fund the same shall be used to pay such emergency warrants issued against that fund, in the order in which the same are presented for payment.

History: En. Sec. 4, Ch. 134, L. 1945; amd. Sec. 2, Ch. 147, L. 1965.

Amendment

The 1965 amendment substituted "the fund of the school district for which the emergency budget was adopted" for "the general fund of the school district" in the final sentence; inserted "for that fund" after "all unexpended appropriations in the annual budget" in the final sentence; substituted "after deducting the amount required for the reserve, if any" for "the reserve" in the final sentence; inserted "in that fund" after "if any balance remains" in the final sentence; and inserted "issued against that fund" after "used to pay such emergency warrants" in the final sentence.

75-1720. Statement of total of emergency warrants—tax levy. The county treasurer shall, not later than the first Monday in August of the

following school year, make out a statement for such school district showing the total amount of such emergency warrants issued then outstanding against any fund or funds, and the amount of money, if any, in the said fund or funds of the school district applicable to the payment thereof, and the amount or amounts for the payment of which a special tax levy or tax levies should be made, and deliver the same to the board of county commissioners. For each fund of the emergency budget for which an emergency levy is required as determined herein, the board of county commissioners shall, on the second Monday in August, make and fix a levy against the taxable property in the school district which will raise sufficient funds to pay such outstanding emergency warrants, with interest thereon, and the county treasurer shall, when collected, place the proceeds of each levy in a special fund and use the same to pay such outstanding emergency warrants with interest thereon as may be obligations against such fund. If after all such emergency warrants have been paid any amount remains in any such special fund it shall be, by such county treasurer, transferred to the comparable regular fund of the school district.

History: En. Sec. 5, Ch. 134, L. 1945; amd. Sec. 3, Ch. 147, L. 1965.

Amendment

The 1965 amendment substituted "against any fund or funds" for "and unpaid" after "emergency warrants issued then outstanding" in the first sentence; substituted "the said fund or funds" for "the general fund" before "of the school district applicable to the payment thereof" in the first sentence; inserted "or amounts" after "amount" and "or tax levies" after "special tax levy" in the latter part of the first sentence; substituted "For each fund of the emergency budget for which an emergency levy is required as determined herein, the board of county commissioners shall" at the beginning of the second sentence for "Such board shall"; substituted "the proceeds of each levy" in the second sentence for "the same"; added "as may be obligations against such fund" at the end of the second sentence; inserted "any" before "such special fund" in the third sentence; and substituted "the comparable regular fund" in the third sentence for "the general fund."

75-1723. (1019.19) **Fixing tax levy.** The county superintendent of schools, as clerk of the school budget board, shall, when the board of county commissioners meet on the second Monday in August for the purpose of fixing tax levies, lay before such board the elementary school budgets for all school districts in the county, as finally adopted and approved by the school budget board.

It shall further be the duty of the county commissioners of each county in the state to fix and levy a tax for each school district in the county within the limitations prescribed by this act in such number of mills as will produce the amount shown by the final budget to be raised by tax levy which may also include a reserve fund, not to exceed thirty-five per cent (35%) of the amount appropriated in the final and approved budget for the then current school year, for the purpose of maintaining the elementary and high school of the district from July 1 to November 30 of the next succeeding year; provided that such school district tax plus federal reimbursements in lieu of taxes shall not, unless approved by a vote of the taxpaying electors, exceed the maximum budgets set forth in section 75-1713.1, R.C.M. 1947.

To finance the approved nonoperating budget of any school district in which no elementary school will be operated, the county commissioners shall fix and levy a tax for such school district in such number of mills as will produce the amount shown by the approved budget to be raised by tax levy, after deducting from the total amount to be financed the following:

(1) any net nonoperating fund cash balance; provided, that whenever a nonoperating district did not have a nonoperating fund the preceding year, the net cash balances in all of the regular funds of the district shall be combined to form a single balance which shall be called the nonoperating fund cash balance; provided, further, that any district which operated at least one (1) school in the year immediately preceding the budget year may retain separately any cash balance previously designated as its general fund cash reserve, if in the judgment of the trustees of such district the retention of such general fund cash reserve is essential to the operation of a school anticipated for the year following the budget year, and any such retained cash reserve shall not be deducted from the total amount required for the nonoperating budget;

(2) the amount of any transportation reimbursement anticipated from the county;

(3) the amount of any transportation reimbursement anticipated from the state public school equalization fund; and

(4) any miscellaneous revenues available to the district. The remainder of the nonoperating budget amount, after deduction of the above revenues, shall be financed by a tax levied on the taxable valuation of the property of the school district.

History: En. Sec. 19, Ch. 146, L. 1931; amd. Sec. 10, Ch. 199, L. 1949; amd. Sec. 2, Ch. 208, L. 1951; amd. Sec. 1, Ch. 247, L. 1953; amd. Sec. 1, Ch. 247, L. 1961; amd. Sec. 2, Ch. 182, L. 1963; amd. Sec. 2, Ch. 267, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 182 and once by Ch. 267. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 182, Laws 1963, added the third paragraph, including the clauses numbered (1) to (4).

Chapter 267, Laws 1963, deleted from the end of the first paragraph clauses reading, "and it shall be the duty of the county commissioners of each county in the state to fix and levy a tax of five (5) mills on the dollar of the taxable value of all school districts within the county, provided that if a levy of less than five (5) mills will be sufficient to meet the approved budget of any school district, then such lesser levy shall be made, but no school district levying less than five (5) mills shall receive any apportionment from the state public school equalization fund"; and substituted "the maximum budgets set forth in section 75-1713.1, R. C. M. 1947" at the end of the second paragraph for "the rate of levy required to produce an amount equal to the foundation program and the additions thereto, within the limitations of thirty per cent (30%), hereinbefore specified, and provided, further, that such last mentioned additional school district tax shall not, in any event, exceed fifteen (15) mills unless the excess above said fifteen (15) mill limitation shall first have been authorized at an election held in accordance with the general school laws pertaining to the voting of additional levies, save and except that in any district wherein more than fifteen (15) mills is required to reach the thirty per cent (30%) limit above the foundation program, such increase above the fifteen (15) mill limit may be financed by federal reimbursements in lieu of taxes without a vote of the taxpayers up to the thirty per cent (30%) limit above the foundation program."

CHAPTER 18—SCHOOL DISTRICTS

Section 75-1802. Classifications of districts—number of trustees.
75-1804. Limitation in creating or changing boundaries of districts.
75-1805. Creation of new districts out of other districts—change of boundaries.
75-1810. Indebtedness to remain against original territory upon creation of new school district out of other districts—indebtedness to be assumed by new district when districts are consolidated.
75-1813. Consolidated districts—procedure in event of consolidation—annexation—bonded debts.
75-1813.1. Consolidated districts in two or more counties.
75-1816. Budget and tax levy in joint districts.

75-1802. (1021) Classifications of districts—number of trustees. All districts having a population of eight thousand (8000) or more shall be districts of the first class. All districts having a population of one thousand (1000) or more, and less than eight thousand (8000) shall be districts of the second class, and all districts having a population of less than one thousand (1000) shall be districts of the third class. In districts of the first class the number of trustees shall be seven (7); in districts of the second class the number of trustees shall be five (5), and in districts of the third class the number of trustees shall be three (3).

Whenever the population of any school district shall increase beyond or decrease below the number required as specified above for a certain class of school district, the county superintendent of schools shall declare such school district to be changed to the proper class. The county superintendent may compute the population by multiplying by three the number of school census children in the district. No school district shall be changed in classification more than once in any five (5) year period. The county superintendent of schools shall take the necessary steps to provide that at the next school election to elect the proper number of school trustees as designated above and to fill all vacancies due to any change of classification. Provided however that the provisions of this act shall not affect the terms of trustees heretofore elected.

History: En. Sec. 401, Ch. 76, L. 1913; re-en. Sec. 1021, R. C. M. 1921; amd. Sec. 1, Ch. 85, L. 1943; amd. Sec. 1, Ch. 203, L. 1963.

Amendment

The 1963 amendment deleted the words "as determined by the federal census next preceding" which followed "class of school district" in the first sentence of the second paragraph; and inserted the second and third sentences of the second paragraph.

Cross-References

Interlocal co-operation agreements, secs. 16-4901 to 16-4904.

75-1804. (1023) Limitation in creating or changing boundaries of districts. No school district shall be created nor boundaries changed between March 1st and July 1st of any calendar year; provided, that this limitation shall not apply to boundary changes made under section 75-1813.

History: En. Sec. 1760, Pol. C. 1895; re-en. Sec. 849, Rev. C. 1907; re-en. Sec. 403, Ch. 76, L. 1913; amd. Sec. 1, Ch. 69, L. 1917; re-en. Sec. 1023, R. C. M. 1921; amd. Sec. 1, Ch. 18, L. 1923; amd. Sec. 1, Ch. 37, L. 1933; amd. Sec. 1, Ch. 56, L. 1961; amd. Sec. 1, Ch. 140, L. 1963.

Amendment

The 1963 amendment added the proviso.

Repealing Clause

Section 2 of Ch. 140, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 140, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 2, 1963.

References

State ex rel. Blackwood v. Lutes, 142 M 29, 381 P 2d 479.

75-1805. (1024) Creation of new districts out of other districts—change of boundaries. (1) A new school district may be created out of portions of one (1) or more existing school districts where the taxable valuation (the percentage valuation upon which levies are made and taxes computed) of property remaining in each district from which territory is taken is not reduced below seventy-five thousand dollars ($75,000.00) and where the number of census children between the ages of six (6) and sixteen (16) years is not reduced below fifteen (15). For the purpose of organizing a new school district out of one (1) or more existing districts, a petition in writing shall be made to the county superintendent of schools, signed by parents or guardians of at least ten (10) census children between the ages of six (6) and sixteen (16) years, residing within the boundaries of the proposed new district, and residing at a greater distance than three (3) miles from any schoolhouse owned by any one of such school districts in which a school is maintained. The method for measurement of the distance between the residence and the schoolhouse shall be as provided in section 75-3411, R. C. M. 1947, in so far as the same may apply. The petition shall describe the boundaries of the proposed new district and give the names of all children of school age residing therein at the date of the presenting of said petition. The petition shall also show the taxable valuation (the percentage valuation upon which levies are made and taxes computed) of the property within the proposed new district which must not be less than seventy-five thousand dollars ($75,000.00) as shown by the last completed assessment roll. Provided, however, that said provision as to the minimum remaining taxable valuation of each district from which territory is taken shall not apply in a case where such district has at least fifty thousand (50,000) acres of nontaxable Indian land remaining within its borders and provided, further, that said provision as to the minimum taxable valuation of such proposed new district shall not apply where such proposed district contains at least fifty thousand (50,000) acres of nontaxable Indian land.

(2) to (4). * * * [Same as parent volume.]

(5) A majority of the resident taxpayers who are registered electors and whose names appear upon the last completed assessment roll for state, county and school district taxes, residing in territory which is a part of any organized school district may present a petition in writing to the county superintendent of schools, asking that such territory be transferred to, or included in, any other organized district to which said territory is contiguous, provided, however, that no territory within three (3) miles of an established school in such district shall be so transferred. Under this subsection, the three (3) miles shall be measured between a residence and a schoolhouse as provided in section 75-3411, R. C. M. 1947, in so far as the same may apply; and provided further

that the taxable valuation (the percentage valuation upon which levies are made and taxes computed) of property in the district from which territory is taken shall not be reduced to less than seventy-five thousand dollars ($75,000.00); provided, however, that this latter provision shall not apply in cases where the remaining taxable valuation of the district from which the territory is taken contains at least fifty thousand (50,000) acres of nontaxable Indian land.

(6) to (8). * * * [Same as parent volume.]

History: Ap. p. Sec. 1751; Pol. C. 1895; re-en. Sec. 840, Rev. C. 1907; amd. Sec. 1, Ch. 82, L. 1911; amd. Sec. 404, Ch. 76, L. 1913; amd. Sec. 8, Ch. 196, L. 1919; re-en. Sec. 1024, R. C. M. 1921; amd. Sec. 1, Ch. 138, L. 1927; amd. Sec. 1, Ch. 175, L. 1933; amd. Sec. 1, Ch. 61, L. 1943; amd. Sec. 1, Ch. 232, L. 1955; amd. Sec. 1, Ch. 163, L. 1957; amd. Sec. 1, Ch. 171, L. 1965.

Amendment

The 1965 amendment inserted the third sentence in subsection (1); divided subsection (5) into two sentences; and inserted that portion of the second sentence in subsection (5) preceding the provisos therein.

75-1810. (1029.1) **Indebtedness to remain against original territory upon creation of new school district out of other districts—indebtedness to be assumed by new district when districts are consolidated.** When a new school district shall be formed as provided in section 75-1805, the bonded indebtedness of any school district or portion of school district affected by such change of boundaries, shall remain the indebtedness against the original territory against which such bonds were issued and shall be paid for out of levies made against said original territory. When a new school district shall be formed as provided in section 75-1813, the bonded indebtedness of any school district affected by such consolidation or annexation shall become the indebtedness and obligation of the consolidated district and be paid by levies imposed upon the property therein.

History: En. Sec. 1, Ch. 163, L. 1933; amd. Sec. 1, Ch. 271, L. 1967.

Amendments

The 1967 amendment substituted "section 75-1805" for "sections 75-1805 and 75-1813" after "as provided in"; deleted "consolidation or" before "change of boundaries"; and added the last sentence.

75-1813. (1034) **Consolidated districts—procedure in event of consolidation—annexation—bonded debts.** Any two or more school districts lying in one county may be consolidated, either by the formation of a district by consolidation, or by the annexation of one or more districts to an existing district, as hereinafter provided.

When severally the boards of trustees of two (2) or more school districts, in regular meeting called for the publicly announced purpose of considering plans for consolidation of said two (2) or more districts and by majority vote of each board of trustees acting separately shall ask for district consolidation of each and all such petitioning boards, the county superintendent of schools having jurisdiction of such districts, within not less than twenty (20) nor more than thirty (30) days, shall cause notice of election to be given by the clerk in each district seeking

election on such proposed consolidation of districts. Such notice is to be posted in three (3) public places in each such district and published in a newspaper published in the county and having general circulation in the school districts, giving the time and place or places specified in each notice to vote on the question of consolidation.

Consolidation of any two (2) or more school districts lying in one county may also be effected by the people of the districts concerned whenever a petition shall be directed to and received by the county superintendent of schools, and shall in each such district seeking consolidation be signed by not fewer than twenty per cent (20%) of the qualified electors in such district. The county superintendent shall within not less than twenty (20), nor more than thirty (30) days, cause notice to be given as provided in the next preceding paragraph.

The votes at such election shall be by ballot, which shall read "For consolidation" or "Against consolidation." At such election those qualified electors whose names appear upon the last preceding completed assessment roll shall be furnished ballots printed upon white paper and all other qualified electors shall be furnished ballots printed upon paper distinctly yellow in color. Separate ballot boxes shall be used for the receipt of voted ballots so that the white ballots will be segregated from the yellow ballots. The judge or judges at such election shall, within ten (10) days thereafter, certify the result of the vote to the county superintendent of the county in which the district lies.

If both the majority of the total votes cast in each district holding such election be for consolidation, and the majority of the votes cast by those qualified electors whose names appear upon the last preceding completed assessment roll in each district holding such election be for consolidation, provided that at least a percentage of such electors in each district, equal to the percentage required in section 75-3914, R.C.M. 1947, for approval of a bond issue, have voted, it carries, and the superintendent, within ten (10) days thereafter, shall make a proper order to give effect to such vote, and shall thereafter transmit a copy thereof to the county clerk and recorder and to the clerk of each district affected. If the order be for the formation of a new district, it shall specify the number of such district, and the county superintendent shall appoint trustees and designate the terms of office to be served by each until subsequent school elections shall determine their successors.

At the regular election succeeding there shall be elected by the regularly qualified electors the number of trustees required to replace those whose terms are expiring. The election of trustees and terms shall be the same as for other districts under the general school laws.

When, in the interest of reducing cost of operation or improving the school service for pupils, a board of trustees of a third class district seeking to annex its territory to a third class district or districts maintaining a high school, a second class district or districts, or a first class district or districts or any combination thereof; a board of trustees of a third class district maintaining a high school seeking to annex its territory to a second class district or districts or a first class district or districts or any combination thereof; or the board of trustees of a second

class district seeking to annex its territory to a first class district or districts, shall by majority vote of its members or at the request of twenty per cent (20%) of the qualified electors of the districts indicated by a petition, ask the county superintendent of schools to annex the territory and property of such district to any district or districts as herein provided. As the board resolution or petition requests, the county superintendent shall, upon an approving vote of the trustees of the district or districts with which the annexation is sought, authorize an election in the petitioning district on such annexation within not less than twenty (20) nor more than thirty (30) days. Notice of such election shall be given in the same manner and the same general plan for balloting shall be utilized on the question of district annexation by the electors of the petitioning district that is authorized herein for district consolidation.

The ballot shall in this case be "For annexation" and "Against annexation." Should the action of the boards of trustees approving the plan of annexation be approved by majority vote of electors of the district or districts seeking election on the issue and by majority vote of the electors of the district or districts seeking election on the issue whose names appear upon the last completed assessment roll, provided that at least a percentage of such electors in each district, equal to the percentage required in section 75-3914, R. C. M. 1947, for approval of a bond issue, have voted, then the consolidation sought shall be effected by order of the county superintendent of schools within ten (10) days after such election. In the event of a disapproving vote by majority of votes cast by all the electors or by the electors whose names appear on the last preceding completed assessment roll or if the percentage of the electors whose names appear upon the last preceding completed assessment roll and who vote in either of such voting districts is less than the percentage required in section 75-3914 for approval of a bond isue, the proposed annexation shall fail.

In case of annexation of any district to any existing district or districts, as herein provided, the proper officers of the annexed districts, within ten (10) days from the receipt of a copy of the annexation order, shall turn over to the proper officers of the district or districts to which it is annexed, all records, funds, and effects of such annexed district. When a district is proportionately annexed, as provided herein, section 75-1808, Revised Codes of Montana, 1947, controls. In case of the formation of a district by consolidation the proper officers of the discontinued district or districts in like manner, within ten (10) days after the organization of the district by consolidation, shall turn over the records, funds, and effects of such old district to the proper officers of the district created by consolidation.

In case of creation of a district by annexation, the title to schoolhouses and sites of the petitioning district shall vest in the receiving district or districts in which the schoolhouses and sites are located. The officers of the receiving district or districts shall continue to hold office until the end of the terms for which they were duly elected and their successors shall be regularly elected as provided by law.

School districts created by consolidation or annexation shall be governed by the general school laws of the state.

Bonded indebtedness of any district resulting from merger by consolidation or annexation shall become the indebtedness and obligation of the consolidated district and be paid by levies imposed upon property therein, provided that when a third class district is proportionately annexed to any number of first or second class districts, as herein provided, the bonded indebtedness, if any, of such third class district shall become the bonded indebtedness of such first or second class districts in the same proportions as the taxable valuation of each annexed portion bears to the total taxable valuation of such third class district.

History: En. Sec. 407, Ch. 76, L. 1913; re-en. Sec. 1034, R. C. M. 1921; amd. Sec. 1, Ch. 201, L. 1943; amd. Sec. 1, Ch. 32, L. 1951; amd. Sec. 1, Ch. 23, L. 1953; amd. Sec. 1, Ch. 205, L. 1965; amd. Sec. 2, Ch. 271, L. 1967. Cal. Pol. C. Sec. 1577.

Amendments

The 1965 amendment deleted subsection designations; substituted "formation of a district by consolidation" for "formation of a new district" in the first paragraph; substituted "notice of election" for "a ten (10) days' posted notice" near the end of the first sentence of the second paragraph; substituted "published in a newspaper published in the county and having general circulation in the school districts" for "in one or more newspapers of the district or county, if there be such" in the second sentence of the second paragraph; substituted "cause notice to be given as provided in the next preceding paragraph" at the end of the third paragraph for "cause a ten (10) days' posted notice to be given by the clerk in each district seeking election on such proposed consolidation of districts. Such notice is to be posted in three (3) public places in each such district, and in one or more newspapers of the district or county, if there be such, giving the time and place or places specified in each notice to vote on the question of consolidation"; substituted "The judge or judges" for "The presiding officer" at the beginning of the second sentence of the fourth paragraph; deleted "name and" before "number of such district" in the second sentence of the fifth paragraph; substituted "appoint trustees and designate the terms of office to be served by each until subsequent school elections shall determine their successors" at the end of the fifth paragraph for "appoint three (3) trustees to serve until the first Saturday in April succeeding"; substituted "the number of trustees required to replace those whose terms are expiring" at the end of the first sentence of the sixth paragraph for "three (3) trustees, one of whom shall serve for one (1) year, one for two (2) years, and one for three (3) years"; inserted "seeking to annex its territory to a third class district or districts maintaining a high school, a second class district or districts, or a first class district or districts or any combination thereof; or the board of trustees of a second class district seeking to annex its territory to a first class district or districts" in the first sentence of the seventh paragraph; substituted "such district to any district or districts as herein provided" at the end of the first sentence of the seventh paragraph for "such third class district to any second or first class district in its entirety, or proportionately to any number of first or second class districts"; inserted "or districts" after "district" in the second sentence of the seventh paragraph and twice in the first sentence of the ninth paragraph; inserted "in the petitioning district" after "authorize an election" near the end of the second sentence of the seventh paragraph; deleted "or districts as the case may be" after "petitioning district" in the third sentence of the seventh paragraph; substituted "district seeking annexation then the anexation sought shall be effected by order of the county superintendent" in the second sentence of the eighth paragraph for "district or districts seeking election on the issue then the consolidation sought shall be effected by the county superintendent"; deleted "by either of such voting districts" after "votes cast" in the third sentence of the eighth paragraph; deleted "or districts" after "annexation of any district" in the first sentence of the ninth paragraph; inserted the second sentence in the ninth paragraph; substituted "formation of a district by consolidation" and "organization of the district by consolidation" in the third sentence of the ninth paragraph for "formation of a new district" and "organization of the new district"; inserted "district or" after "discontinued" in the third sentence of the ninth paragraph; substituted "district created by consolidation" for "new districts" at the end of the ninth paragraph; substituted "creation of a district" for "consolidation of districts" near the beginning of the tenth paragraph; substituted "petitioning district" for "separate districts" in the first sentence of the tenth paragraph; substituted "the receiving district

or districts in which the school houses and sites are located" at the end of the first sentence of the tenth paragraph for "the new consolidated district"; substituted "the receiving district or districts" for "the first or second class district involved" in the second sentence of the tenth paragraph; substituted "School districts created by consolidation or annexation" for "Consolidated school districts" at the beginning of the eleventh paragraph; substituted "resulting from merger" for "merged" near the beginning of the final paragraph; and made several other minor changes in phraseology and punctuation.

The 1967 amendment inserted the second and third sentences in the fourth paragraph; inserted "both" before "the majority," and "total" before "votes cast" and "and the majority of the votes * * * have voted" before "it carries" in the first sentence of the fifth paragraph; and inserted "or districts" before "seeking," and "election on the issue * * * then the consolidation" before "sought shall be effected" and inserted "by all the electors * * * of a bond issue" before "the proposed annexation" in the eighth paragraph.

Effective Date

Section 2 of Ch. 205, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 6, 1965.

Preparation of Ballots

Where the ballots for a consolidation election were prepared to read only "For" or "Against" rather than "For consolidation" or "Against consolidation" as required by subsection 2 of this section, and testimony showed that in at least one instance a voter was confused by this reading and mismarked her vote, the election was on its face null and void. Woolsey v. Carney, 141 M 476, 378 P 2d 658.

75-1813.1. Consolidated districts in two or more counties. (1) Any two or more school districts that are adjacent and contiguous lying in two (2) or more counties may be consolidated, either by the formation of a new district or by the annexation of one or more districts to an existing district, as hereinafter provided.

When severally the boards of trustees of two (2) or more school districts, in regular meeting called for the publicly announced purpose of considering plans for consolidation of said two (2) or more districts and by majority vote of each board of trustees acting separately shall ask for district consolidation of each and all such petitioning boards, the superintendents of each county affected having jurisdiction of such districts, within not less than twenty (20) nor more than thirty (30) days, shall cause a ten (10) days' posted notice to be given by the clerk in each district seeking election on such proposed consolidation of districts. Such notice is to be posted in three (3) public places in each such district and in one (1) or more newspapers of the district or county, if there be such, giving the time and place or places specified in each notice to vote on the question of consolidation.

Consolidation of any two (2) or more school districts that are adjacent and contiguous lying in two (2) or more counties may also be effected by the people of the districts concerned whenever a petition shall be directed to and received by the county superintendents of schools of each county affected, and shall in each such district seeking consolidation be signed by no fewer than twenty per cent (20%) of the qualified electors in such district. The county superintendents shall within not less than twenty (20) nor more than thirty (30) days, cause a ten (10) days' posted notice to be given by the clerk in each district seeking election on such proposed consolidation of districts. Such notice is to be posted in three (3) public places in each such district, and in one (1) or more newspapers of the district or county, if there be such, giving

the time and place or places specified in each notice to vote on the question of consolidation.

(2) The votes at such election shall be by ballot, which shall read "For consolidation" or "Against consolidation." The presiding officer at such election shall, within ten (10) days thereafter, certify the result of the vote to the county superintendents of the counties affected in which the district lies.

(3) If the majority of the votes cast in each district holding such election be for consolidation, it carries, and the superintendents of each county affected, within ten (10) days thereafter, shall in concurrent action make proper orders to give effect to such vote, and shall thereafter transmit a copy thereof to the county clerk and recorder of each county affected and to the clerk of each district affected. If the order be for the formation of a new district, it shall specify the name and number of such district, and county superintendents of the counties affected in concurrent action shall appoint three (3) trustees to serve until the first Saturday in April succeeding.

(4) At the regular election succeeding there shall be elected by the regularly qualified electors three (3) trustees, one (1) of whom shall serve for one (1) year, one (1) for two (2) years, and one (1) for three (3) years. The election of trustees and terms shall be the same as for other districts under the general school laws.

(5) Consolidated school districts shall be governed by the general school laws of the state.

(6) Bonded indebtedness of any district merged by consolidation shall remain the indebtedness and obligation of the district which originally incurred such bonded indebtedness and be paid by levies imposed upon property therein.

History: En. Sec. 1, Ch. 141, L. 1965.

Title of Act

An act providing for formation and control of joint school districts.

Effective Date

Section 2 of Ch. 141, Laws 1965 read "This act is effective April 1, 1965."

75-1816. (1036.1) Budget and tax levy in joint districts. The board of school trustees of each joint school district shall consider, prepare and adopt a preliminary budget according to the provisions of section 75-1706, provided that a copy of such budget shall be transmitted to the county superintendent of schools of each county in which any part of such joint school district is situated. The county superintendents of all such counties must, either by correspondence, meetings, or in some other manner, ascertain and determine the number of mills which should be levied in such joint school district for each fund for which a levy is to be made. After ascertaining and determining the number of mills which should be levied for each said fund, in the manner herein provided, all such county superintendents of schools shall make and sign a joint statement, addressed to the board of county commissioners of each county in which a part of the joint school district is situated, setting forth the number of mills which should be levied for each fund, as so ascertained and determined by such

county superintendents, by the boards of county commissioners of such counties, and shall deliver or transmit one copy of such statement to each such board of county commissioners not later than the Saturday immediately preceding the second Monday in August.

The number of mills to be levied on all of the property of such joint district for each tax-supported fund shall be determined in accordance with the general laws pertaining to tax levies for school districts, provided that the following exceptions to general financing procedures shall be made:

(a) In the general fund budget and solely for the purpose of determining the amounts of county equalization aid to be allocated to the joint district for its foundation program, the total foundation program amount of the joint district shall be considered as consisting of as many separate foundation programs as there are counties in which any portion of the joint district is situated. The amount of each such separate foundation program shall bear to the total amount of the foundation program the same relationship that the number of ANB pupils in the joint district residing in each such county bears to the total ANB of the joint district. To the requirements of each such separate foundation program shall be applied the estimated state interest and income payment based on the number of census pupils in such portion. The amount of county equalization aid to be allocated to such separate foundation program shall then be determined in accordance with the provisions of section 75-3618. Following the determination of the amount of county equalization aid from each county in which any portion of the joint district is situated, the total remaining requirements of the general fund budget shall be financed in accordance with the general laws, provided that, to receive state equalization aid, such joint district must apply to its foundation program all district revenue from the state permanent school fund.

(b) In the transportation fund budget and solely for the purpose of apportioning among the counties wherein any portion of the joint district is situated the amount of county reimbursement for elementary transportation to be allocated to the joint district, the obligation for the total amount of such county reimbursement shall be distributed among such counties in the same proportion as the ANB of the joint district is distributed by residence in each such county.

History: En. Sec. 1, Ch. 105, L. 1925; amd. Sec. 2, Ch. 182, L. 1951; amd. Sec. 3, Ch. 151, L. 1961; amd. Sec. 3, Ch. 267, L. 1963.

Amendment

The 1963 amendment deleted from the end of the third sentence of paragraph (a) the words "plus the estimated revenue to be derived from a levy of five mills on the dollar of the taxable value of the property in such portion"; and deleted from the end of paragraph (a) the words "and a district-wide five-mill levy."

75-1832. (1039.8) Failure to properly keep books—penalty, etc.

Clerk of School Board

The clerk of a school district board of trustees does not perform any of the sovereign functions of government; consequently, he is an employee rather than a public officer, so that quo warranto is not available to test the right to the position. State ex rel. Running v. Jacobson, 140 M 221, 370 P 2d 483, 486.

CHAPTER 19—CLERKS OF SCHOOL DISTRICTS—SCHOOL CENSUS

Section 75-1904. Checking census reports—maintaining files—census of handicapped.

75-1901. (1049) Clerk—duties of.

Nature of Position

The clerk of a school district board of trustees does not perform any of the sovereign functions of government; consequently, he is an employee rather than a public officer, so that quo warranto is not available to test the right to the position. State ex rel. Running v. Jacobson, 140 M 221, 370 P 2d 483, 486.

75-1904. (1051.1) **Checking census reports—maintaining files—census of handicapped.** It shall be the duty of the county superintendent of schools upon receipt of the report as provided in section 75-1903 to carefully examine the same and check it for errors or duplications with other census reports filed by other clerks of school districts of his county. For the purposes of assisting him in checking duplication in such reports, he shall make an alphabetical card index, classified by families, showing the names of all children on the school census, which index shall be kept current according to the census reports turned in to him each year. If the name of the same person be found upon more than one report or if the report contains names which are fictitious or names which properly belong in some other school district, he shall strike out such fictitious names and all duplicate names from all lists except that of the district in which such person was residing in good faith on the first day of October. If the county superintendent should find upon any census list the names of any persons who he believes were not residents in good faith in such district as aforesaid or which he believes are fictitious, he shall notify the clerk of the particular school district and if said clerk shall not establish the correctness of the list within fifteen (15) days after such notification, such names shall be stricken from the list. At the time of taking the annual census the clerk, with the co-operation of the public health nurse or school nurse or public health medical officer, shall use reasonable diligence to ascertain the names of all handicapped children in the district and such information concerning the same as is required by the state superintendent of public instruction, except that such a survey of handicapped children need not be conducted annually but shall be made at the time of the annual school census when required by the state superintendent of public instruction in co-operation with the state board of health.

History: En. Sec. 2, Ch. 118, L. 1927; amd. Sec. 1, Ch. 140, L. 1955; amd. Sec. 1, Ch. 213, L. 1965; amd. Sec. 1, Ch. 153, L. 1967.

Amendments

The 1965 amendment inserted "with the co-operation of the public health nurse or school nurse or public health medical officer" near the beginning of the final sentence; and added "except that such a survey of handicapped children need not be conducted annually but shall be made at least once every four years at the time of the annual school census as directed by the state superintendent of public instruction in co-operation with the state board of health" at the end of the section.

The 1967 amendment, in the final sentence, deleted "at least once every four years" before "at the time of the annual school census" and substituted "when required" for "as directed" before "by the state superintendent."

CHAPTER 20—GRADES AND COURSES OF STUDY IN THE PUBLIC SCHOOLS—CORRESPONDENCE SCHOOLS—VISUAL TEACHING

Section 75-2009. Health instruction in public schools required.

75-2002. (1054) Courses of instruction.

Cross-Reference

Driver education courses, secs. 75-5301 to 75-5309.

75-2009. Health instruction in public schools required. Instruction in health, physical education and recreation shall be a part of the course of instruction and training in the public elementary and secondary schools. The course of instruction shall be prepared by the state superintendent. To provide supervision for the instruction, he shall appoint a supervisor who is a graduate of an accredited institution of higher education with a master's degree in physical education. The supervisor's annual salary shall be comparable to other supervisor's.

History: En. Sec. 1, Ch. 49, L. 1941; amd. Sec. 1, Ch. 252, L. 1967.

Amendments

The 1967 amendment deleted "That on and after September 1941" at the beginning of the section; deleted "established and made" before "a part of the course"; deleted "schools" after "public elementary"; and substituted the second, third and fourth sentences for "of the state, provided, however, that no further special qualifications shall be required of persons teaching in the public elementary and secondary schools of the state until required by the state board of education."

Repealing Clause

Section 2 of Ch. 252, Laws 1967 read "Section 75-2010, R. C. M. 1947 is repealed."

75-2010. Repealed.

Repeal

This section (Sec. 2, Ch. 49, L. 1941), relating to the duties of the superintendent of public instruction, was repealed by Sec. 2, Ch. 252, Laws 1967.

CHAPTER 22—SCHOOL DAY, MONTH AND YEAR—HOLIDAYS—CONSTITUTION, PIONEER AND ARBOR DAY

Section 75-2212. Arbor day—date of.

75-2212. (1068) Arbor day—date of. The last Friday of April in each year shall be known throughout the state of Montana as Arbor day.

History: En. Sec. 2040, 5th Div. Comp. Stat. 1887; amd. Sec. 1990, Pol. C. 1895; amd. Sec. 1, Ch. 11, L. 1907; re-en. Sec. 1022, Rev. C. 1907; amd. Sec. 1, Ch. 83, L. 1909; re-en. Sec. 1401, Ch. 76, L. 1913; re-en. Sec. 1068, R. C. M. 1921; amd. Sec. 1, Ch. 61, L. 1963.

Amendment

The 1963 amendment substituted "last Friday of April" for "second Tuesday of May."

Effective Date

Section 2 of Ch. 61, Laws 1963 provided that the act should be effective immediately upon its passage and approval. Approved February 21, 1963.

CHAPTER 24—TEACHERS—POWERS AND DUTIES—ELECTION—DISMISSAL

Section 75-2401. Re-election of teachers—when automatic—acceptance.

75-2401. (1075) Re-election of teachers—when automatic—acceptance. After the election of any teacher or principal for the fourth consecutive

year in any school district in the state, such teacher or principal so elected shall be deemed re-elected from year to year thereafter at the same salary unless the board of trustees shall by majority vote of its members on or before the first day of April give notice in writing to said teacher or principal that he has been re-elected or that his services will not be required for the ensuing year, but in this written notice, the board of trustees, if requested by the teacher or principal, must declare clearly and explicitly the specific reason or reasons for the failure of re-employment of such teacher. The teacher or principal, if he so desires, shall be granted a hearing and reconsideration of such dismissal, before the board of trustees of that school district. The request for a hearing and reconsideration must be made in writing and submitted to the board of school trustees within ten (10) days after receipt of notice of dismissal. The board of trustees must hold a hearing and reconsider its action within ten (10) days after receipt of such request for a hearing and reconsideration. Provided that nothing in this act shall be construed to prevent the re-election of such teacher or principal by such board at an earlier date, and also provided that in case of re-election of such teacher or principal, he shall notify the board of trustees in writing within twenty (20) days after the notice of such re-election of his acceptance of the position tendered him for another year and failure to so notify the board of trustees shall be regarded as conclusive evidence of his nonacceptance of the position.

The board of trustees of any school district or county high school may terminate the services for the ensuing year of any teacher who has attained, or will attain the age of sixty-five (65) years before the following first day of September, by giving notice in writing before the first day of April that his services will not be required for the ensuing year, provided, however, that a board of trustees may in its discretion continue to employ a teacher until the age of seventy (70) years has been attained.

History: En. Sec. 801, Ch. 76, L. 1913; re-en. Sec. 1075, R. C. M. 1921; amd. Sec. 1, Ch. 87, L. 1927; amd. Sec. 1, Ch. 166, L. 1949; amd. Sec. 1, Ch. 26, L. 1957; amd. Sec. 1, Ch. 144, L. 1963.

Amendment

The 1963 amendment added the second paragraph.

75-2411. (1085) **Dismissal—appeal.**

Want of Jurisdiction

Where record showed that there was no meeting of school board, either special or regular, as required by section 75-1622 prior to schoolteacher being summarily fired on ground of incompetency pursuant to this section, board's dismissal of teacher was void for want of jurisdiction. Wyatt v. School District No. 104, — M —, 417 P 2d 221, 223, 225.

CHAPTER 25—TEACHERS' EXAMINATIONS AND CERTIFICATES

Section 75-2501. Examinations and certificates—certificates of qualification required of teachers.
75-2516. Classes of certificates for teaching.
75-2518. Outstanding certificates for teaching.
75-2521. Fees for certificates for teaching.

75-2501. (1088) Examinations and certificates—certificates of qualification required of teachers. 1. Except as provided in subsection 2 of this section, no certificate to teach in the public schools of Montana shall

be granted to any person who is not a citizen of the United States. This requirement shall not apply to persons who are not citizens of the United States but who are approved annually by the state superintendent of public instruction for employment in the public schools, the public junior colleges and units of the university of Montana as exchange teachers from foreign countries, or for special instruction, study, or research.

2. The superintendent of public instruction, in accordance with section 75-2516 and upon request of a board of trustees, may issue a Class 5 provisional certificate to a person who is not a citizen.

3. * * * [Same as 2 in parent volume.]

4. * * * [Same as 3 in parent volume.]

5. * * * [Same as 4 in parent volume.]

History: Ap. p. Sec. 900, Ch. 76, L. 1913; amd. Sec. 20, Ch. 196, L. 1919; re-en. Sec. 1088, R. C. M. 1921; amd. Sec. 8, Ch. 131, L. 1923; amd. Sec. 1, Ch. 147, L. 1931; amd. Sec. 1, Ch. 90, L. 1947; amd. Sec. 1, Ch. 83, L. 1961; amd. Sec. 1, Ch. 90, L. 1961; amd. Sec. 1, Ch. 242, L. 1965.

Amendment

The 1965 amendment inserted "Except as provided in subsection 2 of this section" at the beginning of subsection 1; substituted "state superintendent of public instruction" for "state board of education" in the second sentence of subsection 1; made changes in arrangement and phraseology in the second sentence of subsection 1; deleted from subsection 1 a final sentence reading, "During no school or university year may the number of persons so approved for employment by the state board of education exceed a total of one hundred (100) persons for both the public schools and the units of the university of Montana"; inserted a new subsection 2; and appropriately renumbered the succeeding subsections.

75-2516. Classes of certificates for teaching. The state superintendent of public instruction may issue the following classes of certificates for teaching in accordance with the rules and regulations approved and adopted by the state board of education:

Class 1 to Class 4. * * * [Same as parent volume.]

Class 5. Provisional certificate. The provisional certificate may be issued to applicants who provide evidence satisfactory to the state board of education of intent to qualify themselves in the future for the Class 1 professional certificate or the Class 2 standard certificate, and who have completed the following minimum of academic and/or professional training at a unit of the university of Montana or equivalent institution as provided by section 75-2515:

a. For elementary endorsement. Applicants shall have completed a minimum of two years in a teacher education program on or before August 31, 1966, and shall submit application for initial certification on or before December 31, 1966. On and after January 1, 1967, applicants shall have completed a four-year college program or its equivalent and shall hold a bachelor's degree.

b. * * * [Same as parent volume.]

Certificates shall be endorsed in accordance with the rules and regulations established by the state board of education for such endorsement.

For purposes of evaluating the qualifications of applicants for teaching certificates, a year means that instructional period consisting of three quarters or two semesters or other terms which are recognized as an academic year by any unit of the university of Montana or equivalent institution.

History: En. Sec. 6, Ch. 142, L. 1949; amd. Sec. 1, Ch. 187, L. 1959; amd. Sec. 1, Ch. 34, L. 1965.

Amendment

The 1965 amendment added the second sentence to paragraph a under Class 5 and added to the first sentence of said paragraph a the words "on or before August 31, 1966, and shall submit application for initial certification on or before December 31, 1966."

75-2518. Outstanding certificates for teaching. No provisions of sections 75-2511 through 75-2521, R. C. M. 1947, shall affect or impair the validity of any certificate for teaching in force on July 1, 1959, or the rights and privileges of the holders by virtue thereof, save that any certificate may be suspended or revoked for any of the causes and by the procedures specified by law.

Any holder of an elementary school standard certificate issued prior to July 1, 1959, under previous statute and in force on July 1, 1959, shall be eligible for renewal of such certificate in accordance with the rules and regulations of the state board of education until the holder qualifies for the Class 2 standard certificate as provided in section 75-2516, as amended.

Any holder of a Class 5 certificate in force on June 30, 1966, or issued between July 1, 1966, and December 31, 1966, shall be eligible for renewal of such certificate in accordance with the rules and regulations of the state board of education until the holder qualifies for the Class 2 standard certificate as provided in section 75-2516 as amended.

History: En. Sec. 7, Ch. 142, L. 1949; amd. Sec. 3, Ch. 187, L. 1959; amd. Sec. 2, Ch. 34, L. 1965.

Amendment

The 1965 amendment substituted "sections 75-2511 through 75-2521, R. C. M. 1947" for "this act" near the beginning of the first paragraph; and added the third paragraph.

75-2521. Fees for certificates for teaching. For the issuance, renewal or extension of a certificate to teach, each applicant for such certificate shall pay a fee of two dollars ($2.00) for each year that the certificate is in force. Such fee shall be paid to the state superintendent of public instruction, who shall deposit such fees with the state treasurer to the credit of the general fund.

History: En. Sec. 10, Ch. 142, L. 1949; amd. Sec. 62, Ch. 147, L. 1963; amd. Sec. 32, Ch. 121, L. 1965.

Amendments

The 1963 amendment substituted "to the credit of the general fund" at the end of the second sentence for "and report each month to the state auditor the amount of fees collected"; and deleted a third sentence reading, "The state auditor shall credit all such fees to the division of certification of the state department of public instruction."

The 1965 amendment increased the fee specified in the first sentence from $1.00 to $2.00.

CHAPTER 27—TEACHERS' RETIREMENT SYSTEM

Section 75-2701. Definitions.
75-2703. Administration.
75-2704. Membership.
75-2705. Membership application and creditable service.
75-2707. Benefits.
75-2708. Management of moneys.
75-2709. Method of financing.
75-2709.1. Inclusion in school budget of payments to teachers' retirement reserve fund.
75-2709.2. Use of reserve fund.

75-2701. Definitions. The following words and phrases used in this act shall have the following meanings unless a different meaning is plainly required by the content:

(1) to (12). * * * [Same as parent volume.]

(13) "Earnable compensation" shall mean the full rate of the compensation, pay or salary that would be payable to a teacher if he worked the full normal working time provided that any teacher who received a salary or compensation in excess of seven thousand dollars ($7,000) per annum subsequent to July 1, 1965, may use such salary as a basis of compensation for the purpose of this system if (a) he contributes five per cent (5%) of the excess of such salary subsequent to July 1, 1965, over seven thousand dollars ($7,000) to his individual account in the annuity savings fund and (b) he contributes three and one-half per cent (3½%) of the excess of his salary subsequent to July 1, 1965, over seven thousand dollars ($7,000) to the pension accumulation fund. In cases where compensation includes maintenance, the retirement board shall fix the value of that part of the compensation not paid in money.

(14) and (15). * * * [Same as parent volume.]

(16) "Annuity" shall mean payments for life derived from the accumulated contributions of a member as provided in this act. All annuities shall be paid in equal monthly installments. The board may make an annual payment to the beneficiaries of the difference between the rate of interest used in calculating the benefit from the annuity reserve fund and the rate of interest earned on investments.

(17) to (22). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 87, L. 1937; subd. (7) amd. Sec. 1, Ch. 202, L. 1939; amd. Sec. 1, Ch. 215, L. 1939; amd. Sec. 1, Ch. 137, L. 1945; amd. Sec. 1, Ch. 28, L. 1949; amd. Sec. 1, Ch. 216, L. 1953; amd. Sec. 1, Ch. 235, L. 1959; amd. Sec. 1, Ch. 209, L. 1963; amd. Sec. 1, Ch. 238, L. 1967.

Amendments

The 1963 amendment increased the amounts set forth in paragraph (13) from $6,000 to $7,000 in three places, and from $5,000 to $5,700 in three places; and substituted "July 1, 1961" for "July 1, 1957" in three places in paragraph (13).

The 1967 amendment rewrote paragraph 13, which prior to amendment read "(13) 'Earnable compensation' shall mean the full rate of the compensation, pay or salary that would be payable to a teacher if he worked the full normal working time except that any compensation in excess of seven thousand dollars ($7,000) per annum, shall not be used for the purpose of this system provided that any teacher who received a salary or compensation in excess of five thousand seven hundred dollars ($5,700) per annum subsequent to July 1, 1961, may use such salary or that portion of it not in excess of seven thousand dollars ($7,000) as a basis of compensation for the purpose of this system if (a) he contributes five per cent (5%) of the excess of such salary subsequent to July 1, 1961 over five thousand seven hundred dollars ($5,700) and not exceeding seven thousand dollars ($7,000) to his individual account in the annuity savings fund and (b) he contributes three and one-half per cent (3½%) of the excess of his salary subsequent to July 1, 1961, over five thousand seven hundred dollars ($5,700) and less than seven thousand dollars ($7,000) to the pension accumulation fund. In cases where compensation includes maintenance, the retirement board shall fix the value of that part of the compensation not paid in money" and in paragraph (16), added the third sentence.

Repealing Clause

Section 2 of Ch. 209, Laws 1963 repealed all acts and parts of acts in conflict therewith.

75-2703. Administration. (1) to (5). * * * [Same as parent volume.]

(6) The members of the retirement board shall serve without compensation except that the members thereof, excluding superintendent of public instruction, shall receive a per diem fee of twenty dollars ($20.00) each for each day in actual attendance at the meetings of said board or in the execution of their duties as members of said board; provided, however, that in no instance shall any such member of said board receive as said per diem fee, a sum in excess of three hundred dollars ($300.00) in any one (1) year; and the members of said board shall be allowed their actual and necessary traveling expenses while performing their duties as members of said board, which shall be paid quarterly upon proper vouchers from the expense fund hereinafter named.

(7) The retirement board shall elect from its membership a chairman, and shall appoint a secretary who may be, but need not be one (1) of its members.

(8) to (14). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 87, L. 1937; amd. Sec. 1, Ch. 157, L. 1953; amd. Sec. 34, Ch. 177, L. 1965; amd. Sec. 1, Ch. 84, L. 1967.

Amendments

The 1965 amendment deleted from subsection (7) a second sentence reading, "The secretary shall give bond in such amount and with such sureties as the board may require"; and apparently through clerical error, deleted subsections (10), (11), (12), (13), and (14), for text of which see parent volume.

The 1967 amendment increased per diem for members of the retirement board from $10 to $20 and the yearly limit from $100 to $300; and re-enacted subsections (10) to (14), which had been deleted by the 1965 amendment, but without the centered heads appearing in the parent volume.

Effective Date

Section 2 of Ch. 84, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 21, 1967.

75-2704. Membership. (1) and (2). * * * [Same as parent volume.]

(3) The membership of any person in the retirement system shall cease:

(a). * * * [Same as parent volume.]

(b) If he withdraws his accumulated contributions or retires on a pension or dies, but not otherwise, except that the membership of a teacher who has not withdrawn his contributions and who has not had sufficient service to be eligible for disability retirement shall not be canceled, provided the member shall prove to the satisfaction of the retirement board that absence from service was caused by personal illness constituting disability, or service in the armed forces of the United States which includes all members of the army, the navy, the marine corps, and the coast guard, or service in the American Red Cross and merchant marine during time of war, and provided any member with five (5) or more years of service, whose service is discontinued otherwise than by death or retirement, shall have the right to elect within one (1) year after such termination of service, and without right of revocation, whether to allow his accumulated contributions to remain in the retirement fund. Upon the qualification for retirement by reason of age or disability of a member who has elected to allow his accumulated contributions to remain in the retirement fund, he shall receive a retire-

ment allowance in accordance with the provisions of the Teachers' Retirement Act.

(4). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 87, L. 1937; amd. Sec. 2, Ch. 215, L. 1939; amd. Sec. 1, Ch. 15, L. 1945; amd. Sec. 2, Ch. 28, L. 1949; amd. Sec. 2, Ch. 216, L. 1953; amd. Sec. 1, Ch. 240, L. 1967.

Amendments

The 1967 amendment, in subsection (3) (b), decreased from 10 to 5 the number of years of membership service required to be eligible for vested rights.

Cross-Reference

Community college trustees and teachers eligible, sec. 75-4424.

75-2705. Membership application and creditable service. (1) to (8). * * * [Same as parent volume.]

(9) Any teacher who has become employed as a teacher in Montana subsequent to September first nineteen hundred and thirty-seven may receive credit for service for out-of-state teaching employment provided (a) that he contributes to the retirement fund five per cent (5%) of the salary for each year claimed based on the first year's salary earned in Montana; and (b) that the maximum number of such years shall not exceed five (5) and that a year out-of-state employment shall be equivalent to one year membership service in Montana, and (c) that payment of such contribution shall be made in a lump sum or in installments as agreed between such teacher and the retirement board.

(10). * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 87, L. 1937; amd. Sec. 3, Ch. 215, L. 1939; amd. Sec. 3, Ch. 28, L. 1949; amd. Sec. 3, Ch. 216, L. 1953; amd. Sec. 1, Ch. 242, L. 1967.

Amendments

The 1967 amendment, in subsection (9), decreased from 10 to 5 the number of years of out-of-state service a member is allowed to purchase as Montana service.

75-2707. Benefits. (1) Superannuation retirement benefit. (a) Any member who has completed five years of creditable service, the last five years of which shall have been in this state, and who has attained the age of sixty may retire from service, if he files with the retirement board his written application setting forth the fact of his retirement.

(b) That from and after the passage and approval of this act, any member in service who has attained the age of seventy years, during any school year shall be retired by said retirement board on the first day of September following his or her seventieth birthday, provided, however, that this provision shall not apply to teachers in the Montana university system who may be employed beyond the age of seventy upon the recommendation of the president of the unit concerned to the board of regents. Provided further that such teachers (1) shall not be given credit toward retirement pay for teaching service rendered after the end of the school year in which the age of seventy is attained, (2) shall not contribute to the retirement system after the end of said school year, and (3) shall not have the compensation received after the end of said school year used in computing final average salary. Initial employment of teachers in the Montana university system beyond the age of seventy may be made upon the recommendation of the president of

the unit concerned to the board of regents but such employees are denied membership in the teachers' retirement system.

Provided, further, that any retired teacher may be employed as a teacher in Montana and may earn an amount not to exceed one-fourth of his final average compensation without loss of retirement benefits.

(2) Allowance on superannuation retirement. Upon superannuation retirement a member shall receive a superannuation retirement allowance which shall consist of:

(a) An annuity which shall be actuarial equivalent of his accumulated contributions at the time of his retirement, and

(b) A pension of one-quarter of his average final compensation provided his creditable service is at least thirty-five years, otherwise, a pension of one one-hundred fortieth (1/140) of his average final compensation multiplied by the number of years of his creditable service, and

(c) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to one one-hundred fortieth (1/140) of his average final compensation multiplied by the number of years of service certified to him on his prior service certificate.

(d) The minimum annual retirement allowance for a member who has completed thirty years service and who retired after September 1, 1937, and before June 30, 1949, shall be twelve hundred dollars ($1,200.00), and the minimum retirement allowance for a member who retired after September 1, 1937, and before June 30, 1949, but whose service is less than thirty years shall receive a minimum retirement allowance based on the proportionate amount of twelve hundred dollars ($1,200.00) that his service bears to thirty years of service.

(e) The minimum annual retirement allowance for a member who has completed thirty-five years of service and who retires after June 30, 1949, shall be twelve hundred dollars ($1,200.00).

(f) In the event a member retired on a superannuation allowance has not received more than three retirement payments prior to death, the beneficiary of the member shall receive a refund of the difference between the total paid and the amount of the accumulated contributions.

(3) Disability retirement benefit. Upon the application of a member in service or of his employer, any member who qualifies by reason of service for a retirement benefit may be retired by the retirement board not less than thirty and not more than ninety days next following the date of filing such application on a disability retirement allowance, provided that the medical board after a medical examination of such member shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

If the applicant for disability retirement was prevented because of the disability from making application at the time of the time of the commencement of disability, the retirement board shall grant the disability retirement upon the proper application for disability retirement allowance and make payments retroactive to the thirtieth day after the date of commencement of disability.

(4) to (7). * * * [Same as parent volume.]

(8) (a) A member who withdraws from service or ceases to be a teacher for any cause other than death or retirement shall be paid only the amount contributed by the member to his annuity savings account after first deducting any unpaid annual membership fees of said member.

(b) Should a member die before retirement the amount of the member's accumulated contributions shall be paid to his estate or such person as he shall have nominated on a form as the board may require which shall be filed with the board prior to the member's death.

(c) In lieu of benefits provided in (b) above, if the deceased member had qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. Said monthly life annuity to be based on the beneficiary's attained age at the time of the deceased member's death and to be calculated from an amount equal to the required reserve for the deceased member's creditable service, together with the deceased member's accumulated contributions.

(d) If the deceased member had qualified by reason of service for a retirement benefit and was actively engaged as a teacher in the state of Montana within one (1) year prior to his death, the sum of fifty dollars ($50.00) per month shall be paid to each minor child of the deceased member until such child or children reach his or her eighteenth birthday.

(9). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 87, L. 1937; amd. Sec. 2, Ch. 137, L. 1945; amd. Sec. 4, Ch. 28, L. 1949; amd. Sec. 4, Ch. 216, L. 1953; amd. Sec. 1, Ch. 160, L. 1955; amd. Sec. 1, Ch. 270, L. 1959; amd. Sec. 1, Ch. 216, L. 1963; amd. Sec. 1, Ch. 33, L. 1965; amd. Sec. 1, Ch. 259, L. 1965; amd. Sec. 1, Ch. 241, L. 1967.

Compiler's Note

This section was amended twice in 1965, once by Ch. 33 and once by Ch. 259. Since the changes made by the two amendments do not appear to conflict, the compiler has made a composite section incorporating the changes made by both amendatory acts.

Amendments

The 1963 amendment increased the minimum annual allowances set forth in paragraphs (d) and (e) of subsection (2) from $900 to $1,200; and in the second paragraph of subsection (3) deleted superfluous words "time of the" before "commencement of disability."

Chapter 33, Laws of 1965, added to subsection (1)(b) the two provisos in the first paragraph, the last sentence of the first paragraph, and the proviso constituting the second paragraph.

Chapter 259, Laws of 1965, deleted "but such payments shall not exceed in any one (1) month the sum of one hundred dollars ($100.00)" from the end of the second paragraph of subdivision (8)(c).

The 1967 amendment, in subsection (1)(a), decreased from 10 to 5 the number of years wherever stated; in subsection (2)(e), deleted "and who has attained the age of sixty-five" after "years of service"; in subsection (3), substituted "qualifies by reason of service for a retirement benefit" for "has had ten or more years of creditable service in the state of Montana" after "any member who"; in subsection (8)(b), deleted "only" after "retirement," inserted "accumulated" before "contributions," and substituted "shall be paid to his estate or such person as he shall have nominated on a form as the board may require which shall be filed with the board prior to the member's death" for "to his annuity savings fund account after deducting any unpaid annual membership fees shall be paid to his estate or such person as he shall have nominated by written designation duly executed and filed with the retirement board" after "contributions"; deleted the second paragraph in subsection (8)(c), which read, "If the beneficiary so electing be the surviving spouse of the deceased member, such beneficiary shall receive, in addition to the monthly annuity, provided the deceased member was actively engaged as a teacher in the state of Montana within one (1) year prior to his death, the sum of fifty dollars ($50.00) per month for

each child from the pension accumulation fund for the support of the minor child or children of the deceased member until such child or children reach his or her eighteenth birthday"; and added subsection (8)(d).

Effective Date

Section 2 of Ch. 259, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

75-2708. Management of moneys. (1) The retirement board shall be the trustees of the moneys collected under this act and the same shall be invested and reinvested by the state board of land commissioners as part of the long term investment fund.

(2) The retirement board annually shall allow regular interest on the average amount for the preceding year on such moneys with the exception of moneys used for administrative expense. The amount so allowed shall be annually credited to such moneys by the retirement board from interest and other earnings on the moneys of the retirement system. Any additional amount required to meet the interest on the moneys of the retirement system shall be paid by the state during the ensuing year and any excess of earning over such amount required shall be deductible from the amounts to be contributed by the state during the ensuing year. Regular interest shall mean such per centum rate to be compounded annually as shall be determined by the retirement board on the basis of the interest earnings of the system for the preceding year and of the probable earnings to be made, in the judgment of the board, during the immediate future.

(3) The state treasurer is the custodian of the moneys collected under this act and of the securities in which said moneys are invested. All payments of such moneys shall be made only upon claims signed by two (2) persons designated by the retirement board. A duly attested copy of a resolution of the retirement board designating such persons and bearing on its face specimen signatures of such person shall be filed with the state controller as his authority for approving such claims.

(4). * * * [Same as parent volume.]

(5) The board may in its discretion transfer the savings account of a member to the pension accumulation moneys if the account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

(6) All of the funds referred to in section 75-2709 except the expense fund shall be replaced by one or more accounts in the agency fund. The expense fund shall be replaced by an account in the earmarked revenue fund.

History: En. Sec. 7, Ch. 87, L. 1937; amd. Sec. 3, Ch. 176, L. 1953; amd. Sec. 5, Ch. 216, L. 1953; amd. Sec. 196, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in subsection (1), substituted "moneys collected under" for "several funds created by"; in the first sentence of subsection (2), substituted "on such moneys with the exception of moneys used for administrative expense" for "in each of the funds with the exception of the expense fund"; deleted "shall be due and payable to said funds and" after "The amount so allowed" in the

second sentence of subsection (2); substituted "to such moneys" for "thereto" in the second sentence of subsection (2); substituted "moneys" for "funds" in the third sentence of subsection (2); substituted "moneys collected under this act" for "several trust funds" and "moneys" for "funds" in the first sentence of subsection (3); substituted "of such moneys" for "from said funds" and "claims" for "vouchers" in the second sentence of subsection (3); substituted "state controller" for "treasurer" and "approving such claims" for "making payments upon such vouchers" in the third sentence of subsection (3); deleted from subsection (3) a fourth sentence reading, "No voucher shall be drawn unless it has previously been authorized by resolution of the retirement board"; substituted "pension accumulation moneys" for "pension accumulation fund" in subsection (5); made minor changes in phraseology; and added subsection (6).

75-2709. Method of financing. There are hereby created and established an "annuity savings fund" and "annuity reserve fund," a "pension accumulation fund," a "pension reserve fund" and an "expense fund," into which funds all of the assets of the retirement system shall be credited according to the purpose for which they are held as hereinafter prescribed.

(1) and (2). * * * [Same as parent volume.]

(3) Pension accumulation fund. The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and from which pensions and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

(a) Each and every employer shall pay into the pension accumulation fund an amount equal to three and seventy-five one hundredths per centum (3.75%) of the earnable compensation of each member employed during the whole or such part of the preceding payroll period as such member was so employed by such employer; provided, however, that no payments shall be made into said pension accumulation fund until after July 1, 1945. Provided, further, until such time as the legislative assembly shall provide adequate funds for the establishment of such reserves as are set up in this act, such parts of such act as deal with reserves to be built up by contributions from the state shall be inoperative. Provided, further, that for each payroll period after July 1, 1975, the employers' contribution shall be three and fifty one hundredths per centum (3.50%).

(b) to (q). * * * [Same as parent volume.]

(4) and (5). * * * [Same as parent volume.]

History: En. Sec. 8, Ch. 87, L. 1937; amd. Secs. 2 and 3, Ch. 202, L. 1939; amd. Sec. 3, Ch. 137, L. 1945; amd. Sec. 5, Ch. 28, L. 1949; amd. Sec. 1, Ch. 239, L. 1959; amd. Sec. 2, Ch. 216, L. 1963.

Amendment

The 1963 amendment substituted "July 1, 1975" for "July 1, 1965" in the final proviso to paragraph (3) (a); and made a minor change in punctuation.

75-2709.1. Inclusion in school budget of payments to teachers' retirement reserve fund. The board of trustees of school districts and county high schools may in their respective budgets make and provide an appropriation for payments to a reserve fund for teachers' retirement not to exceed thirty-five per cent (35%) of the total amount budgeted annually for the retirement fund.

History: En. Sec. 1, Ch. 117, L. 1967.

Title of Act

An act authorizing school boards to make and provide an appropriation in

school budgets for payment to a reserve fund for teachers' retirement not to exceed thirty-five per cent (35%) of the total amount budgeted annually for the retirement fund to be used for payment of teachers' retirement expenses incurred at the beginning of each school year.

75-2709.2. Use of reserve fund. The reserve fund may be used for the purpose of paying teachers' retirement expenses incurred at the beginning of each school year when funds for this purpose are not available as budgeted. The funds shall not be used for any other purpose.

History: En. Sec. 2, Ch. 117, L. 1967.

CHAPTER 30—JUVENILE DISORDERLY PERSONS—COMMITMENT TO INDUSTRIAL SCHOOL

Section 75-3002. Commitment to state vocational school for girls or state industrial school.

75-3002. (1172) Commitment to state vocational school for girls or state industrial school. If the parent, guardian, or other person in charge of any child, shall, upon the complaint under the last section for a failure to cause the child to attend a recognized school, prove inability to do so, then he or she shall be discharged and thereupon the truant officer shall make complaint that the child is a juvenile disorderly person within the meaning of the preceding section. If such complaint is made before any mayor, justice of the peace or police judge, it shall be certified by such magistrate to the district court in and for the county in which the child resides or to a judge of said district court. The district court or the judge thereof to whom the same is certified shall hear such complaint, and if it be determined that the child is a juvenile disorderly person within the meaning of the preceding section the said child shall be committed by the said court, or the judge thereof to whom the complaint was certified, to the state vocational school for girls, state industrial school, or other department of institutions juvenile facility. If for any cause the parent, guardian, or other person in charge of any juvenile disorderly person as defined in the preceding section shall fail to cause such juvenile disorderly person to attend school, the complaint against such juvenile disorderly person shall be made, heard, and determined in like manner as provided in case the parent proves inability to cause such juvenile disorderly person to attend school.

History: Ap. p. Sec. 6, Ch. 45, L. 1903; amd. Sec. 1, Ch. 80, L. 1905; re-en. Sec. 972, Rev. C. 1907; amd. Sec. 1107, Ch. 76, L. 1913; re-en. Sec. 1172, R. C. M. 1921; amd. Sec. 88, Ch. 199, L. 1965.

Amendment

The 1965 amendment substituted "state vocational school for girls, state industrial school, or other department of institutions juvenile facility" for "industrial school hereinafter provided for, where he shall be subject to all rules and regulations of said industrial school" at the end of the third sentence; and made a separate fourth sentence out of language formerly appearing as a proviso to the third sentence.

CHAPTER 31—SCHOOLHOUSE SITES AND CONSTRUCTION

Section 75-3109. Agreements authorized for joint interstate school facilities.
75-3110. Form of agreement—approval by superintendent of public instruction required.
75-3111. Election on interstate agreement—form of ballot.

75-3112. Location of joint interstate facilities.
75-3113. Financing of joint interstate facilities.
75-3114. Authority to enter into leases and agreements—"building" defined.
75-3115. Requirements before board may enter into lease or agreement.
75-3116. Maximum term of lease or agreement.
75-3117. Right of board to lease property under lease providing for construction of building thereon, and for building to vest in school district at expiration of term.
75-3118. Terms and conditions of agreement for construction of building—provisions for bids and bidding.
75-3119. Election before or after entering into lease or agreement.
75-3120. Contents of ballot and manner of election before entering into lease or agreement.
75-3121. Provisions for voiding authorization for increase in maximum tax rate.
75-3122. Resolution of governing board declaring intention to enter into lease or agreement—opening and accepting bids.
75-3123. Amount of rental agreed to be paid as district obligation for year of payment.
75-3124. Use of temporary quarters or portable buildings.
75-3125. Submission of certified copy of proceedings to attorney general—examination—validation of proceedings.

75-3102. (1174) Architecture—approval of state board of health, etc.

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

75-3109. Agreements authorized for joint interstate school facilities. The board of trustees of any school district with boundaries adjoining another state may enter into an agreement and contract with a school district in such adjoining state to provide for the joint erection, operation and maintenance of school facilities for both districts upon such terms and conditions as may be mutually agreed upon between such districts in accordance with the provisions of this act.

History: En. Sec. 1, Ch. 240, L. 1965.

Title of Act

An act authorizing school districts adjoining another state to contract with school districts in the neighboring state for the joint erection, operation and maintenance of school facilities for both districts; providing for the financing of such joint facilities; and providing for the approval of contracts for such joint facilities by the electors of the school district.

75-3110. Form of agreement—approval by superintendent of public instruction required. An agreement proposed for adoption by a school board under this act shall be in the form and contain such terms as may be prescribed by the superintendent of public instruction and no agreement shall be submitted to a vote of the people under this act unless it has first been approved in writing by the superintendent of public instruction.

History: En. Sec. 2, Ch. 240, L. 1965.

75-3111. Election on interstate agreement—form of ballot. An approved agreement shall be submitted to the electorate of the school district at a special election called for that purpose or at a regular election for school trustees. The question on the ballot at said election shall be in substantially the following form.

"Shall the proposed agreement between this school district and school district number ——— of ——————— county, state of ———————, be executed?"

No agreement made pursuant to this act shall be valid until it has been approved by the electors of the district in the manner herein provided.

History: En. Sec. 3, Ch. 240, L. 1965.

75-3112. Location of joint interstate facilities. Facilities erected and maintained under this act may be located either in Montana or such adjoining state.

History: En. Sec. 4, Ch. 240, L. 1965.

75-3113. Financing of joint interstate facilities. The school district entering into such an agreement may borrow money, levy taxes and issue bonds for such joint facilities in the same manner and to the same extent as other school districts within this state.

History: En. Sec. 5, Ch. 240, L. 1965.

75-3114. Authority to enter into leases and agreements—"building" defined. Any school district may enter into leases and agreements relating to real property and buildings to be used by the district pursuant to this act. As used in this act, "building" includes on-site and off-site facilities, utilities or improvements which the school board determines are necessary for the proper operation or function of the school facilities to be leased. It also includes the permanent improvement of school grounds.

History: En. Sec. 1, Ch. 321, L. 1967.

Title of Act

An act authorizing school districts to enter into lease agreements for the rental of needed school buildings.

75-3115. Requirements before board may enter into lease or agreement. Before the board of trustees of a school district enters into a lease or agreement pursuant to this act, it shall have available a site upon which a building to be used by the district may be constructed and shall have complied with the provisions of law relating to the selection and approval of sites, and it shall have prepared and shall have adopted plans and specifications for such building which have been approved pursuant to section 75-3102, R. C. M. 1947. A district has a site available for the purposes of this section if it owns a site or if it has an option on a site which allows the school district or the designee of the district to purchase the site. Any school district may acquire and pay for an option containing such a provision.

History: En. Sec. 2, Ch. 321, L. 1967.

75-3116. Maximum term of lease or agreement. The term of any lease or agreement entered into by a school district pursuant to this act shall not exceed forty (40) years.

History: En. Sec. 3, Ch. 321, L. 1967.

75-3117. Right of board to lease property under lease providing for construction of building thereon, and for building to vest in school district at expiration of term. The board of trustees of a school district may let, at a minimum rental of one dollar ($1) a year, to any person, firm, or

corporation any real property which belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of a building or buildings for the use of the school district during the term thereof, and provides that title to such building shall vest in the school district at the expiration of such term. Such instrument may provide for the means or methods by which such title shall vest in the school district prior to the expiration of such term, and shall contain such other terms and conditions as the governing board may deem to be in the best interest of the school district.

History: En. Sec. 4, Ch. 321, L. 1967.

75-3118. Terms and conditions of agreement for construction of building—provisions for bids and bidding. The board of trustees of any school district may enter into an agreement with any person, firm, or corporation under which such person, firm, or corporation shall construct, or provide for the construction of, a building to be used by the district upon a designated site and lease such building and site to the district. Such instrument shall provide that the title to such building and site shall vest in the district at the expiration of such lease, and may provide the means or method by which the title to the building and site shall vest in the district prior to the expiration of such lease, and shall contain such other terms and conditions as the governing board of the district deems to be in the best interest of the district.

The agreement entered into shall be with the lowest responsible bidder who shall give such security as the board requires. The board may reject all bids. For the purpose of securing bids the board shall publish at least once a week for two (2) weeks in some newspaper of general circulation published in the district, or if there is no such paper, then in some paper of general circulation circulated in the county, a notice calling for bids, stating the proposed terms of the agreement and the time and place where bids will be opened.

History: En. Sec. 5, Ch. 321, L. 1967.

75-3119. Election before or after entering into lease or agreement. The governing board of a school district shall call and hold an election, pursuant to sections 7 and 8 [75-3120 and 75-3121] of this act, before entering into a lease or agreement.

History: En. Sec. 6, Ch. 321, L. 1967.

75-3120. Contents of ballot and manner of election before entering into lease or agreement. Before entering into a lease or agreement pursuant to this act, the board of trustees of the district shall call, hold, and conduct an election in the general manner provided for calling, holding and conducting school bond elections by sections 75-3910, 75-3912, 75-3913 and 75-3915, R. C. M. 1947, and the ballot used in the election shall contain substantially the words: "Shall the board of trustees of ———— District be authorized to issue and sell bonds, or enter into a lease agreement for the acquiring and equipping of a building for use by the school

district at (designate location), and, for such purposes, shall the maximum tax rate of the district be increased from ———— to ———— ————, such rate to be in effect in the ———— District for the year 19———— to 19————, be authorized and the amount of such increase used solely and exclusively for such purposes?" If such proposition shall be approved the trustees shall be authorized to bond or lease, whichever in their judgment shall be most advantageous to the school district. Bonding shall be accomplished under the laws of chapter 39 of Title 75, R. C. M. 1947, and subject to the limitations therein. Any indebtedness incurred under this act shall be considered indebtedness within the meaning of article XIII, section 6 of the constitution of the state of Montana, in the same manner as bonded indebtedness.

History: En. Sec. 7, Ch. 321, L. 1967.

75-3121. Provisions for voiding authorization for increase in maximum tax rate. If the board of trustees of the district fails to enter into a lease pursuant to this article within one (1) year after the result of an election, held pursuant to section 7 [75-3120] of this act, at which a majority of the votes cast favors the proposition submitted, the authorization for an increase in the maximum tax rate shall become void.

History: En. Sec. 8, Ch. 321, L. 1967.

75-3122. Resolution of governing board declaring intention to enter into lease or agreement—opening and accepting bids. After the governing board of a school district has complied with section 2 [75-3115] of this act, it shall, in a regular open meeting, adopt a resolution declaring its intention to enter into a lease or agreement pursuant to this act. The resolution shall describe, in such manner as to identify it, the available site upon which the building to be used by the district shall be constructed, shall generally describe the building to be constructed and the minimum and maximum amount of floor space required in such building or state that the building shall be constructed pursuant to the plans and specifications adopted by the board of trustees therefor, shall, if such is the case, state the minimum yearly rental at which the governing board will lease real property belonging to the district upon which the building is to be constructed, and shall state the maximum number of years for which the school district will lease the building or site and building, as the case may be, and shall state that the proposals submitted therefor shall designate the amount of rental, which shall be annual, semiannual, or monthly, to be paid by the school district for the use of the building, or building and site, as the case may be. The resolution shall fix a time, not less than three (3) weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to enter such a lease or agreement with the school district will be received from any person, firm, or corporation, and considered by the governing board. Notice thereof shall be given by publication in a newspaper published in the county, at least ten (10) days before the time set for such meeting.

At the time and place fixed in the resolution for the meeting of the governing body, all sealed proposals which have been received shall, in

public session, be opened, examined, and declared by the board. Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to enter a lease or agreement and which are made by responsible bidders, the proposal which calls for the lowest rental shall be finally accepted, or the board shall reject all bids. The board may accept or reject a proposal at the meeting where such proposals are opened, or at a subsequent meeting.

History: En. Sec. 9, Ch. 321, L. 1967.

75-3123. Amount of rental agreed to be paid as district obligation for year of payment. The amount of rental which a district agrees to pay during any one (1) year, under a lease or agreement entered into pursuant to this act, is an obligation of such district and is an obligation of such district for such year only.

History: En. Sec. 10, Ch. 321, L. 1967.

75-3124. Use of temporary quarters or portable buildings. When the school enrollment of any school causes overcrowded schoolrooms, the governing board of the school district may make arrangements for the location of the school in temporary quarters or in portable buildings.

These quarters or portable buildings may be procured for a consideration, or at a rental, or by the construction of temporary or portable buildings on school property. The leasing of any portable buildings for placement on the school property shall not be made for a longer period than ten (10) years and may include a provision for the purchase of such buildings on a depreciated basis at the end of such ten (10) year period or prior thereto.

History: En. Sec. 11, Ch. 321, L. 1967.

75-3125. Submission of certified copy of proceedings to attorney general—examination—validation of proceedings. The governing body of any school district shall submit to the attorney general a certified copy of all proceedings relating to leases and agreements entered into by any school district with any person, firm or corporation where such lease or agreement provides for the construction of a building or buildings for the use of the school district during the term of such lease or agreement, together with such other proceedings, certificates and records as he may require and request his report as to examination and validity. It is hereby made the duty of the attorney general to examine such proceedings and if found regular and valid he shall deliver to the clerk of the school district a report of his examination and determination as to the validity of such proceedings. No proceedings submitted to and approved by the attorney general shall be held invalid because of any defect or failure to comply with any statutory provision relating to such proceedings unless the action to contest the validity thereof shall be brought within thirty (30) days after the sale.

History: En. Sec. 12, Ch. 321, L. 1967.

CHAPTER 33—SCHOOL BUSES—REQUIREMENTS—DRIVERS' QUALIFICATIONS—CONSTRUCTION AND OPERATION

Section 75-3308. Authority for regulating design, construction and operation of school buses.

75-3308. Authority for regulating design, construction and operation of school buses. (1) to (5). * * * [Same as parent volume.]

(6) The Montana state board of education is authorized to adopt standards and specifications applicable to lighting equipment on and special warning devices to be carried by school buses, consistent with the provisions of this act, but supplemental thereto; except that such standards and specifications may designate and permit the use of flashing warning lights on school buses for the purpose of indicating when children are boarding or alighting from any said bus. Such standards and specifications shall correlate with and, so far as possible, conform to the specifications then current as approved by the society of automotive engineers.

It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is preparing to stop or is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

History: En. Sec. 1, Ch. 183, L. 1947; amd. Sec. 1, Ch. 172, L. 1955; amd. Sec. 1, Ch. 68, L. 1961; amd. Sec. 4, Ch. 250, L. 1965.

Amendment

The 1965 amendment inserted "is preparing to stop or" before "is stopped" in the second paragraph of subsection (6).

Effective Date

Section 5 of Ch. 250, Laws 1965 read "This act shall be in full force and effect from and after July 1, 1966."

CHAPTER 34—TRANSPORTATION OF PUPILS

Section 75-3403. School board may operate buses or contract for transportation of pupils—school board may set up depreciation reserve for purchase of replacement buses and two-way radios for school bus or buses.
75-3413. Reimbursements.
75-3414. Budgets and levies for transportation.

75-3401. Boards of trustees to furnish transportation.

Cross-Reference

Transportation of pupils living within three miles of school, secs. 75-1641 to 75-1644.

75-3403. School board may operate buses or contract for transportation of pupils—school board may set up depreciation reserve for purchase of replacement buses and two-way radios for school bus or buses. The board of trustees shall have the power to purchase, or rent and provide for the upkeep, care, operation, maintenance, insurance, for two-way radios and for school buses; or to contract and pay for the transportation of eligible pupils, such contracts to run for terms not to exceed five (5) years; and provided further, that each district owning a school bus or buses may levy a sufficient number of mills to create a reserve of not to exceed twenty per cent (20%) per year of the original cost of the bus or buses for which the reserve is created; said fund to be kept separate and apart from all other funds, and to be used only for the purchase of the bus or buses needed to replace the bus or buses and two-way radios

for which said reserve was created, unless authorized by a majority of the votes cast by the qualified electors of the district at an election called for that purpose. Provided, however, that school district trustees may authorize as standard equipment, the installation of two-way radios in a school bus or buses operating in school districts where weather and road conditions may constitute a hazard to the safety of the school pupil passengers. The two-way radios may be operated on the same frequency as that used by the Montana highway patrol and the sheriff of the county, with their permission and the permission of the federal communications commission wherein said school bus or buses operate, or any frequency assigned for such operation by the commission.

History: En. Sec. 3, Ch. 152, L. 1941; amd. Sec. 1, Ch. 163, L. 1951; amd. Sec. 1, Ch. 52, L. 1955; amd. Sec. 1, Ch. 202, L. 1957; amd. Sec. 1, Ch. 74, L. 1965.

Amendment

The 1965 amendment increased the maximum size of the reserve described in the first proviso from 12½% to 20% of original cost.

Repealing Clause

Section 2 of Ch. 74, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 74, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

75-3413. Reimbursements. (a) Each school district and each county high school meeting the requirements of this act shall be entitled to reimbursement from such moneys as may be appropriated by the legislature for transportation, in an amount not to exceed one third (⅓) of the schedule provided for transportation, or services rendered in lieu of transportation, semiannually on presentation to the state superintendent of public instruction, through the office of the county superintendent of schools, of certified claims for such reimbursement using for such purpose the forms provided by the state superintendent of public instruction. A school bus route which travels through several school districts shall have the county and state reimbursement prorated among the school districts which are served by this bus route by the county transportation committee and that the schedules provided in this act for individual transportation and bus transportation or services in lieu thereof, shall be used instead of any schedule which may have been heretofore or may hereafter be fixed and promulgated by the state board of education. In determining the cost of transportation or services in lieu thereof, no amount shall be included except those which have been paid out by a school district or county high school in the regular manner provided for the payment of other financial obligations for the maintenance of their schools.

(b) and (c). * * * [Same as parent volume.]

History: En. Sec. 13, Ch. 152, L. 1941; amd. Sec. 2, Ch. 189, L. 1943; amd. Sec. 1, Ch. 169, L. 1947; amd. Sec. 3, Ch. 200, L. 1949; amd. Sec. 7, Ch. 189, L. 1951; amd. Sec. 1, Ch. 242, L. 1961; amd. Sec. 61, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in the first sentence of subsection (a), deleted the phrase "in the state public school equalization fund" after "from such moneys."

75-3414. Budgets and levies for transportation. (a) The board of trustees of any school district maintaining an elementary school, or schools, or providing for the transportation of its pupils to attend an

elementary school or schools, outside the district, or furnishing services in lieu thereof, shall have the authority and it shall be its duty to provide and adopt a complete transportation budget therefor, which budget shall show in detail and by items the estimated expenditures and receipts for the school year for which it is provided. The estimated expenditures may include a contingency item for the purpose of enabling the trustees of the district to fulfill any obligation to provide transportation in accordance with the provisions of the transportation act for any pupils not residing in the district at the time of adoption of the transportation budget who subsequently become residents of the district during the budget year. The amount of such contingency item shall not exceed ten per cent (10%) of the total amount of the regularly budgeted expenditures of the district arrived at in accordance with the schedule established in section 75-3407, provided, however, that when ten per cent (10%) of the budgeted schedule amount will provide less than one hundred dollars ($100), the ten per cent (10%) limitation shall not apply and the district may budget for a contingency item of up to but not exceeding one hundred dollars ($100). The form of such transportation budget shall be prescribed by the state superintendent of public instruction. The total amount of the estimated expenditures, as shown by such transportation budget, shall be shown and included in the elementary school budget form and the estimated receipts from reimbursements, as shown in such transportation budget, shall be shown and included in the elementary budget form as provided. A copy of the elementary transportation budget adopted, together with a duly signed copy of each and every contract form pertaining thereto shall be transmitted by the county superintendent of schools to the state superintendent of public instruction at the same time copies of the elementary school budgets are required to be so transmitted.

(1) When the total elementary transportation budget has been presented in detail on approved forms including duly signed contract forms for the contracting, operation, maintenance, rent or purchase of school buses, individual transportation, and increased transportation due to isolation, and after deducting all estimated receipts including reimbursements, the balance of the budget shall be paid out of receipts from a tax levied upon all the taxable property of the school district.

(2) The board of trustees of every school district maintaining a high school, or furnishing transportation for its pupils to another high school, or services in lieu thereof, and the board of trustees of every county high school, shall have the authority and it shall be its duty to provide a complete transportation budget therefor, including duly signed contract forms for the contracting, operation, maintenance, rent or purchase of school buses, individual transportation, and increased transportation due to isolation, or any service in lieu of transportation. The budget shall show in detail and by items the estimated expenditures and receipts, including the state transportation reimbursements, for the school year for which it is provided. The estimated expenditures may include a contingency item for the purpose of enabling the trustees of the high school to fulfill any obligation to provide transportation in accordance with the provisions of the

transportation act for any high school pupils not residing in the high school territory under the jurisdiction of the trustees at the time of adoption of the transportation budget who subsequently become residents of said territory during the budget years. The amount of such contingency item shall not exceed ten per cent (10%) of the total amount of the regularly budgeted expenditures of the high school arrived at in accordance with the schedule established in section 75-3407, provided, however, that when ten per cent (10%) of the budgeted schedule amount will provide less than one hundred dollars ($100), the ten per cent (10%) limitation shall not apply and the high school may budget for a contingency item of up to but not exceeding one hundred dollars ($100). The form of such transportation budget shall be prescribed by the state superintendent of public instruction. A copy of the high school transportation budget adopted for each high school, together with a duly signed copy of each and every contract form pertaining thereto, shall be transmitted by the county superintendent of schools to the state superintendent of public instruction at the same time copies of the final high school budgets are required to be so transmitted. For each high school transportation budget arrived at according to the schedule set up in section 75-3407, the amount remaining after deducting all estimated local receipts, and state transportation reimbursements from the total amount required for the transportation budget according to the schedule, shall be the amount required to be raised by tax levy for such high school transportation budget, and the total of all such amounts required to be raised by tax levy for all such high school transportation budgets shall be the total amount required to be raised by county-wide transportation levy, and the county commissioners, except as hereinafter provided, shall make a county-wide levy of such number of mills as will raise such total amount; provided that this amount shall not be more than two-thirds (⅔) of the total of each high school transportation budget according to the schedule as set forth in section 75-3407. The amount remaining in each high school transportation budget over and above the amount arrived at according to the schedules in section 75-3407, as amended, shall be the amount required to be raised by tax levy for each such high school transportation budget and all such amounts required to be raised by tax levy for each such high school transportation budget shall be the total amount required to be raised by high school transportation levy on the high school district if there be one; and in case of a county high school by a county levy, excluding those districts maintaining high schools, otherwise on the common school district, of which each particular high school is a part, and the county commissioners shall make a levy of such number of mills as will raise such needed amount; provided that the amount budgeted for high school transportation in any high school budget shall not be deemed or considered as a part of or included within the maximums for high school budgets as fixed and determined by chapter 199, Laws of 1949, as amended, and the county-wide high school transportation levy herein provided for shall not be deemed or construed as a part of the county-wide high school levy authorized by section 75-4516.1, unless the trustees making such budget so desire and the board of county commissioners find that such high school transportation levy is not re-

quired to raise the amount necessary for such budget for all purposes including transportation or services in lieu thereof. Cash balances on hand at the end of the fiscal year shall be used to reduce the district levy for the ensuing year, provided that if there is a cash balance on hand at the end of a fiscal year and no district levy is required for the ensuing fiscal year under the foregoing provisions, then said cash balance shall be used to reduce the amount to be raised by county-wide levy as herein provided.

(3) The board of trustees of a school district or county high school may include, in each transportation budget, a reserve fund for maintaining transportation service from July first to November thirtieth of the next succeeding school year. The reserve fund shall not exceed twenty per cent (20%) of the amount appropriated in the final and approved transportation budget for the then current school year.

History: En. Sec. 14, Ch. 152, L. 1941; amd. Sec. 3, Ch. 189, L. 1943; amd. Sec. 8, Ch. 189, L. 1951; amd. Sec. 1, Ch. 126, L. 1961; amd. Sec. 1, Ch. 106, L. 1963; amd. Sec. 1. Ch. 243, L. 1967.

Amendments

The 1963 amendment added the final sentence to paragraph (2).

The 1967 amendment substituted "budgeted" for "budget" before "expenditures of the high school" in subdivision (2), and added subdivision (3).

Effective Date

Section 2 of Ch. 243, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 1, 1967.

CHAPTER 35—FREE TEXTBOOKS

Section 75-3503. Textbooks—license to sell—conditions.
75-3505. Textbooks—special or abridged editions.

75-3503. Textbooks—license to sell—conditions. Before any person, company, or corporation shall offer to any school district any textbook for adoption, sale or exchange, in the state of Montana, said person, company, or corporation shall comply with the following conditions:

First: Such person shall file a copy of such textbook in the office of the state superintendent of public instruction, with a sworn statement of the list price; the lowest wholesale price; and the lowest exchange price that will be given when old books in the same subject and of the like kind and grade, but of a different series, are received in exchange, such exchange price to be based on a three (3) year adoption period. Such prices are to be quoted FOB Chicago, FOB San Francisco, FOB any other city from which publishers may ship books, and FOB a textbook depository in Montana.

Second: Such persons shall file with the state superintendent of public instruction a written agreement, (1) to furnish said book or books to any school board in the state of Montana at the said lowest price so filed, and to maintain said prices uniformly throughout the state; (2) to reduce such prices automatically in Montana whenever reductions are made elsewhere in the United States; and (3) to guarantee that at no time shall any book so filed by such persons, be sold in Montana at a higher price than is received for such book elsewhere in the United States under similar conditions of transportation and marketing.

Third: Such persons shall file and maintain with the secretary of state a surety bond for not less than two thousand dollars ($2,000.00) and not more than ten thousand dollars ($10,000.00), such bond to be in an amount to be fixed by the state superintendent of public instruction and to run to the state of Montana, to be conditioned on the faithful performance of all things on the part of such persons to be performed under this act and such bond to be approved by the attorney general. Upon compliance with the foregoing conditions the state superintendent of public instruction shall issue a license to any such person to sell such textbooks to school districts in the state of Montana.

Fourth: License fees. The person receiving such license shall pay a fee of two dollars ($2.00) for each book listed; provided that in the case of several books presented by one publisher in the same subject under the same series head for any one grade, the maximum filing fee in such case shall not exceed six dollars ($6.00). Such moneys received through payment of said filing fees shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 2, Ch. 138, L. 1941; amd. Sec. 63, Ch. 147, L. 1963; amd. Sec. 33, Ch. 121, L. 1965.

Amendments

The 1963 amendment substituted "deposited in the state treasury to the credit of the general fund" at the end of the section for "used to defray all expenses incurred under the provisions of this act. Provided that any surplus which might exist at the end of any biennium shall be transferred to the state public school general fund."

The 1965 amendment increased the fee specified near the beginning of paragraph Fourth from $1.00 to $2.00; and increased the maximum fee specified at the end of the first sentence of paragraph Fourth from $3.00 to $6.00.

Separability Clause

Section 34 of Ch. 121, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

75-3505. Textbooks—special or abridged editions. Whenever the publisher shall prepare an abridged or special edition of any of his books listed with the state superintendent of public instruction and shall supply such special edition elsewhere at a lower wholesale price than the wholesale price for the edition filed with the state superintendent of public instruction, the publisher must agree to furnish such special edition at the wholesale price at which it is furnished elsewhere, so long as it is supplied at the said lower price anywhere outside of Montana; and it shall be understood that the bond given by the publisher shall cover this provision as to special editions. In case an action is brought on such bond, the state, if successful, shall recover the full amount of the bond, which amount shall be paid into the state general fund.

History: En. Sec. 4, Ch. 138, L. 1941; amd. Sec. 64, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "state general fund" for "state public school general fund" at the end of the section.

CHAPTER 36—UNIFORM SYSTEM OF FREE PUBLIC SCHOOLS—STATE SUPPORT—SCHEDULE OF CONTRIBUTIONS

Section 75-3611. Definitions—schedules of financial program.
75-3612. Foundation program.
75-3612.1. Increase in foundation program in anticipation of unusual increase in enrollment—formulas for computation.
75-3612.2. Minimum increase required for application of act.
75-3612.3. Provisions supplemental.
75-3613. State equalization aid to public schools—enumeration of sources—definition.
75-3614. State board of education to administer state public school equalization aid.
75-3615. State superintendent of public instruction to compile data and make reports concerning state equalization aid.
75-3616. Distribution of funds—reports required.
75-3617. Application for approval as isolated schools—circumstances to be considered in acting upon application.
75-3618. Distribution of money available to districts—formula for apportionment of county funds.
75-3619. Formula for distribution of state funds.
75-3620. State superintendent to give notice if state funds inadequate.
75-3621. Resolution to issue warrants—hearing.
75-3624. State payments for children of employees residing at state institutions.

75-3611. Definitions—schedules of financial program. The term "average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending a public school, or attending public schools in a school district as a whole, which average number shall be computed by dividing the sum of the aggregate days of attendance by regularly enrolled pupils and the aggregate days of absence by regularly enrolled pupils during the last completed school year, by the number one hundred eighty (180); provided that attendance for a part of a morning session or part of an afternoon session shall be counted as one-half (½) day's attendance in either case, and provided further, when any regularly enrolled pupil has been absent, with or without excuse, for more than ten (10) consecutive school days in such school year, his absence after the tenth (10th) day and until his return to school shall not be included in the aggregate days of absence. The average number belonging of secondary pupils of a school district or of elementary pupils of a school district does not include the pupils of any high school or of any elementary school which has not been accredited by the state board of education. Pupils of a junior high school which has been duly approved and accredited as such by the state board of education are to be deemed secondary school pupils for the purpose of computing average number belonging of the district in which the junior high school is situated.

Any school district may reopen a school which was not in operation the previous year, which such reopening is approved by the county budget board and the state superintendent of public instruction, and when the county superintendent estimates the probable enrollment for such school to be at least five (5), and the parents of at least three (3) of these five (5) children petition for such reopening; such approved reopened school shall be eligible for county and state aid on its foundation program. Any school district which opens a new school shall comply with at least the minimum requirements for reopening a closed school as herein provided, and no

foundation program shall be established for any new school not meeting the minimum requirements for opening.

Should a school district anticipate an increase in ANB, above the normal state-wide increase of the past year, due to the closing of any private or public school in the district or in neighboring districts, such district shall be allowed an increase in ANB for budget purposes, based on an estimate arrived at by the district superintendent, board and county superintendent and approved by the state superintendent.

The terms, "minimum foundation program" and "foundation program," shall mean the amount required to operate and maintain an adequate and efficient school, as fixed and established by the schedules of minimum operating revenues set forth in section 75-3612.

The term "isolated school," shall mean an elementary school having an ANB of nine (9) or less pupils, the maintenance and operation of which as an isolated school has been approved in the manner hereinafter provided in section 75-3617; and the term, "isolated high school," shall mean a high school having an ANB of twenty-four (24) or less pupils, the maintenance and operation of which as an isolated school has been approved in the manner hereinafter provided in section 75-3617.

The term, "nonisolated school," shall mean an elementary school having an ANB of less than ten (10) pupils, which has not been approved as an isolated school; and the term, "nonisolated high school," shall mean a high school having an ANB of twenty-four (24) or less pupils, which has not been approved as an isolated high school.

History: En. Sec. 2, Ch. 199, L. 1949; amd. Sec. 1, Ch. 107, L. 1951; amd. Sec. 1, Ch. 207, L. 1953; amd. Sec. 1, Ch. 104, L. 1961; amd. Sec. 4, Ch. 267, L. 1963; amd. Sec. 1, Ch. 118, L. 1967.

Amendments

The 1963 amendment increased the maximum size of isolated elementary schools, as defined in the next to last paragraph, from eight to nine pupils; increased the size of nonisolated elementary schools, as defined in the last paragraph, from less than nine to less than ten pupils; and increased the size of nonisolated high schools, as defined in the last paragraph, from less than 20 to less than 24 pupils.

The 1967 amendment substituted "ten (10)" for "three (3)" before "consecutive school days," and "tenth" for "third" after "his absence after the" near the end of the first sentence.

Cross-Reference

Anticipated enrollment of new area vocational schools included in definition of ANB, sec. 75-4308.

75-3612. Foundation program. The moneys available for state equalization aid shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt retirement, and for the payment of any and all costs and expense incurred in connection with any adult education program, kindergarten, recreation program, school lunch and cafeteria program, new buildings, new grounds, and transportation, in accordance with the following schedules:

Elementary Schools

The foundation program shall be eighty per cent (80%) of the maximum budget as set forth in section 75-1713.1, R. C. M. 1947, except for an elementary school having an ANB of nine (9) or fewer pupils which is not

approved as an isolated school; for such school the minimum general fund budget shall be eighty per cent (80%) of the maximum budget as set forth in section 75-1713.1, R. C. M. 1947, provided that the formula for apportioning county funds as provided in section 75-3618, R. C. M. 1947, and the formula for apportioning state equalization aid as provided in section 75-3619, R. C. M. 1947, shall apply only to one-half (½) of such minimum budget of such school, and provided further that the remaining one-half (½) of such minimum budget shall be financed by a tax levied on the property of the school district in which such school is located.

High Schools

The foundation program shall be eighty per cent (80%) of the maximum budget as set forth in section 75-4518.1, R. C. M. 1947.

History: En. Sec. 3, Ch. 199, L. 1949; amd. Sec. 1, Ch. 244, L. 1953; amd. Sec. 1, Ch. 241, L. 1955; amd. Sec. 1, Ch. 251, L. 1957; amd. Sec. 1, Ch. 267, L. 1959; amd. Sec. 1, Ch. 230, L. 1961; amd. Sec. 52, Ch. 147, L. 1963; amd. Sec. 5, Ch. 267, L. 1963; amd. Sec. 1, Ch. 93, L. 1965; amd. Sec. 2, Ch. 317, L. 1967.

Amendments

Chapter 147, Laws 1963, substituted "available for state equalization aid" for "coming into said state public school equalization fund" after "The moneys" at the beginning of the section.

Chapter 267, Laws 1963, incorporated the change made by Ch. 147 and completely rewrote the material under the headings "Elementary Schools" and "High Schools." For previous text, see parent volume.

The 1965 amendment added the exception at the end of the paragraph designated "Elementary Schools."

The 1967 amendment increased the percentage applicable under this section from 75% to 80% wherever found.

Effective Date

Section 2 of Ch. 93, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

75-3612.1. Increase in foundation program in anticipation of unusual increase in enrollment—formulas for computation. A school district or county high school which anticipates an unusual increase in enrollment in the ensuing year may increase its foundation program for the ensuing year in accordance with the following provisions:

(1) For the school district or county high school, the average number belonging approved for foundation program purposes for the current year and each of the immediately preceding three (3) years shall be used to compute the annual percentage increase in average number belonging of each of the years over the immediately preceding year. The three (3) increases shall be averaged to obtain the average annual percentage increase in average number belonging.

(2) On or about May 1 of the current year, the estimated average number belonging for the entire current school year shall be computed, based on pupil attendance and absence records through April 30, increased by the ratio that the total number of school days in the current term bears to the number of school days completed through April 30.

(3) On or about May 1, the board of trustees shall estimate the probable average number belonging to be attained in the ensuing school year, based on such factual information as may be available to the board. The board of trustees shall submit such estimated average number belonging to the county board of school budget supervisors on or before May 10,

for approval of the estimate as the probable average number belonging to be attained during the ensuing year. The estimate shall be accompanied by such data as the county board of budget supervisors may require. The county board of budget supervisors shall act to approve or disapprove the estimated average number belonging on or before May 25, and may adjust any estimate submitted. The county board of budget supervisors shall immediately notify the superintendent of public instruction of the action taken by the board, together with such facts and information as the superintendent of public instruction may deem necessary. The superintendent of public instruction shall approve, disapprove, or adjust the estimate and so notify the board of trustees.

(4) The percentage increase of the average number belonging estimated for the ensuing year approved as in (3) above, over the estimated average number belonging for the current year computed as in (2) above, shall be computed.

(5) Whenever the increase computed in (4) above is at least twice the average annual increase computed in (1) above, the school district or county high school, for the purpose of determining the amount of its foundation program for the ensuing year, may increase the actual average number belonging for the current year by a number to be computed as follows:

(a) Apply the average annual percentage increase as computed in (1) above to the actual average number belonging of the current year to determine the usual average number belonging which would be attained in the ensuing year under normal conditions;

(b) Deduct from the estimated average number belonging for the ensuing year approved as in (3) above, the usual average number belonging for the ensuing year as determined in (a) above. The difference shall be the maximum additional average number belonging which may be added to the actual average number belonging for the purpose of establishing the ensuing year's foundation program.

History: En. Sec. 1, Ch. 265, L. 1963.

Title of Act

An act providing for the allowance of an increase in average number belonging for budget purposes where a school district or county high school anticipates an unusual increase in enrollment in the ensuing year; and providing the procedure for determining the average number belonging.

75-3612.2. Minimum increase required for application of act. The provisions of this act shall not apply to any district or high school in which the average annual percentage increase in average number belonging as computed in subsection (1) of section 1 [75-3612.1(1)] is less than three per cent (3%).

History: En. Sec. 2, Ch. 265, L. 1963.

75-3612.3. Provisions supplemental. The provisions of this act shall be in addition to, and not a limitation upon, the provisions of section 75-3611 with respect to anticipated increases in average number belonging.

History: En. Sec. 3, Ch. 265, L. 1963.

75-3613. State equalization aid to public schools — enumeration of sources—definition. There shall be paid into the earmarked revenue fund,

for state equalization aid to the public schools of the state, the present allocation equal to twenty-five per cent (25%) of all moneys received from the collection of income taxes under sections 84-4901 to 84-4935; and twenty-five per cent (25%) of all moneys received from the collection of corporation license taxes under sections 84-1501 to 84-1519, as provided in section 84-1901; and one-half (½) of the funds received from the treasurer of the United States as the state's share of oil and gas royalties under the act of Congress of February 25, 1920. The term "state equalization aid" as used in the code includes moneys coming to the state from the sources referred to above, plus any legislative appropriation of moneys from other sources for distribution to the public schools.

History: En. Sec. 5, Ch. 199, L. 1949; amd. Sec. 53, Ch. 147, L. 1963.

Compiler's Notes

Sections 84-4916, 84-4918, 84-4923, 84-4925, and 84-4933 through 84-4935, included in the reference to sections 84-4901 to 84-4935 in this section, were repealed by Sec. 15, Ch. 260, L. 1955 and Secs. 2 and 4, Ch. 212, L. 1957.

Amendment

The 1963 amendment substantially rewrote this section. For previous text, see parent volume.

75-3614. State board of education to administer state public school equalization aid. The state board of education shall administer and distribute state equalization aid in the manner and with the powers and duties provided in this act. Said board shall have the power to require such reports from the county superintendent of schools, county budget boards, county treasurers and school trustees as it may deem necessary, and shall provide rules and regulations for the purpose of carrying out the provisions of this act.

History: En. Sec. 6, Ch. 199, L. 1949; amd. Sec. 54, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "shall administer and distribute state equalization aid" in the first sentence for "is hereby declared to be the public school equalization board to administer and distribute said public school equalization fund."

75-3615. State superintendent of public instruction to compile data and make reports concerning state equalization aid. The state superintendent of public instruction shall keep in his office full and complete data concerning moneys available for state equalization aid and, in addition thereto, after July 1, 1949, the requirements of the various school districts of the state for aid from said funds to maintain the foundation financial program herein provided. The state superintendent of public instruction shall report to the state board of education at its meetings to be held in the months of July and December in each year the estimated amount which will be available for state equalization aid for the succeeding six months period, commencing January 1, and July 1. In any year when a session of the state legislative assembly convenes, the state superintendent of public instruction shall report to both branches of the assembly all figures and data available in his office concerning disbursements of state equalization aid during the preceding two years, the amount then available for state equalization aid, and apportionment made of the moneys available for state equalization aid but not yet paid out, and the latest estimate of accruals of moneys available for state equalization aid.

History: En. Sec. 7, Ch. 199, L. 1949; amd. Sec. 55, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "moneys available for state equalization aid" in the first sentence for "accruals and credits to the state public school equalization fund"; substituted "available for state equalization aid" near the end of the second sentence for "in the state public school equalization fund"; substituted "disbursements of state equalization aid" in the third sentence for "disbursements from said fund"; substituted "available for state equalization aid" in the third sentence for "standing to the credit of said fund" and for "of said fund"; and substituted "of moneys available for state equalization aid" at the end of the section for "to said fund."

75-3616. Distribution of funds—reports required. After July 1, 1949, the state board of education shall, in the months of December and April of each year, order disbursements of state equalization aid within the limitations hereinafter specified and upon the basis of reports made to the state superintendent of public instruction, to any county treasurer who controls the fund of any school district or joint school district which, as established by its budget duly approved for the current school year, will not have sufficient funds to maintain the foundation financial program after receipt by it of its apportioned share of interest and income moneys, if any, and from the basic county levies provided for by section 75-3706 and section 75-4516.1. The school district budgets approved and adopted according to law for the current school year, and so verified by the state superintendent of public instruction, shall be the basis for distributing state equalization aid, and the state board of education shall not increase or reduce the state equalization aid to which any school district or county high school is entitled for any school year on the basis of its budget, on account of any difference which may occur during the year between budgeted and actual receipts from any other source of school revenue.

Each order of the state board of education for disbursements of state equalization aid, shall be certified to the state auditor and state treasurer, whereupon the state auditor shall draw his warrants in accordance with such order and the state treasurer shall pay the same to the several county treasurers for credit to the school districts as provided in such order.

History: En. Sec. 8, Ch. 199, L. 1949; amd. Sec. 1, Ch. 60, L. 1961; amd. Sec. 56, Ch. 147, L. 1963; amd. Sec. 6, Ch. 267, L. 1963; amd. Sec. 2, Ch. 198, L. 1965; amd. Sec. 3, Ch. 317, L. 1967.

Amendments

Chapter 147, Laws 1963, substituted "of state equalization aid" for "from the state public school equalization fund" after "disbursements" near the beginning of the section; substituted "apportioned share of interest and income moneys" in the first paragraph for "apportioned share from the permanent school fund of the state, from other constitutional sources"; substituted "amount of state equalization aid apportioned to any school district" in the former proviso to the first paragraph for "amount apportioned to any school district from said state public school equalization fund"; substituted "amount of interest and income moneys apportioned to such school district" in the former proviso to the first paragraph for "amount apportioned to such school district from the permanent school fund"; deleted "acting as the public school equalization board" which followed "state board of education" near the beginning of the second paragraph; and substituted "state equalization aid" for "funds from the state public school equalization fund" after "disbursements of" in the second paragraph.

Chapter 267, Laws 1963, incorporated the first change made by Ch. 147, Laws 1963; substituted "and from the basic county levies provided for by section 75-3706 and section 75-4516.1" at the end of the first paragraph for "from the district levy of five mills for the foundation program provided for by section 75-1723, the county levies provided for by this act, and from all other regular sources of revenue required to be used to finance

the foundation program as provided in sections 75-1723 and 75-4516.1"; deleted from the end of the first paragraph a proviso which (after amendment by Ch. 147, Laws 1963) read: "provided, however, that the amount of state equalization aid apportioned to any school district, when added to the amount of interest and income moneys apportioned to such school district, shall not exceed fifty per cent (50%) of the total foundation program of such district, computed at the rates and amounts set forth in section 75-3612"; and incorporated the changes made in the second paragraph by Ch. 147, Laws 1963.

The 1965 amendment adopted the changes made by both 1963 amendments; added the second sentence to the first paragraph; and added all of the material following the second paragraph.

The 1967 amendment deleted the last eight paragraphs which read, "Any undistributed state equalization aid remaining at the end of any fiscal year shall be distributed in accordance with the following provisions, for the purpose of reducing the amount of the basic county levy for high schools to be levied in the ensuing fiscal year.

"(1) The unexpended balance of the general fund appropriation for state equalization aid shall be added to the unexpended moneys in the earmarked revenue fund account designated for state equalization aid;

"(2) The sum obtained in paragraph (1) shall be divided by the statewide total average number belonging which was verified as the basis for all foundation programs for the year ended June 30 to obtain a per pupil payment amount;

"(3) For each county, the per pupil payment shall be multiplied by the verified ANB for all foundation programs in the county for the year ended June 30 to obtain a county payment amount;

"(4) For each county an amount equivalent to the county payment obtained in paragraph (3) shall be transmitted by the state treasurer to the county treasurer on or before July 20 of the immediately ensuing fiscal year, and the county superintendent of schools shall be notified of such amount by the state superintendent of public instruction. The county treasurer shall credit the payment to the account for the basic special tax for high schools as provided in section 75-3722.

"(5) The amount of revenue anticipated from the basic county levy for high schools as provided in section 75-4516.1 shall be computed from the number of mills required for such levy and the taxable valuation of all taxable property within the county.

"(6) The county payment amount obtained in paragraph (4) shall be deducted from the basic county levy amount obtained in paragraph (5), and the remainder shall be the amount of the basic county levy to be fixed for high schools for the ensuing year; the number of mills of such basic county levy for high schools shall be based on the amount so obtained, together with the taxable valuation of all taxable property within the county.

"In any year when application of the provisions of this section would result in a per pupil payment amount of less than one dollar ($1.00), the provisions of this section shall not apply."

75-3617. Application for approval as isolated schools—circumstances to be considered in acting upon application. Before any elementary school having an ANB of nine (9) or less may be approved as an isolated school, and before any high school having an ANB of twenty-four (24) or less may be approved as an isolated high school, the board of trustees of the district wherein said school is located shall, on or before the first day of May in each year, make written application to the budget board for such approval. Such application shall be acted upon on or before the fifteenth day of June, and such application shall be granted if said budget board shall find and determine that transportation of the pupils of such school to another school is impractical by reason of the existence of obstacles to travel, such as mountains, rivers, poor roads, distance of pupils' homes from county roads or highways, or the distance of such isolated school from the nearest open school having room and facilities for the pupils of such isolated school; and an elementary school may also be approved as an isolated school upon a finding and determination by said budget board, approved by the county superintendent of schools and by the state superintendent of public instruction of the existence of conditions other than

obstacles to travel which would result in unusual hardship to the pupils of such isolated school if they were transported to another school, and if none of the above-mentioned circumstances exist, such application shall be denied.

History: En. Sec. 16, Ch. 199, L. 1949; amd. Sec. 2, Ch. 230, L. 1961; amd. Sec. 7, Ch. 267, L. 1963; amd. Sec. 1, Ch. 117, L. 1965.

Amendments

The 1963 amendment substituted "nine (9)" for "eight (8)" near the beginning of the section in the phrase pertaining to elementary schools; deleted "said budget board shall find and determine that" before "transportation of the pupils" near the beginning of the second sentence; and substituted "or other conditions resulting in unusual hardship to the pupils, such school shall be approved as an isolated school upon a finding and determination by said budget board, approved by the county superintendent of schools and by the state board of education" near the end of the section for "and an elementary school may also be approved as an isolated school upon a finding and determination by said budget board, approved by the county superintendent of schools and by the state superintendent of public instruction of the existence of conditions other than obstacles to travel which would result in unusual hardship to the pupils of such isolated school if they were transported to another school."

The 1965 amendment restored the clauses "said budget board shall find and determine that" and "and an elementary school may also be approved as an isolated school upon a finding and determination by said budget board, approved by the county superintendent of schools and by the state superintendent of public instruction of the existence of conditions other than obstacles to travel which would result in unusual hardship to the pupils of such isolated school if they were transported to another school" which had been deleted by the 1963 amendment; and deleted the clauses which had been substituted near the end of the section by the 1963 amendment.

Effective Date

Section 2 of Ch. 117, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 1, 1965.

75-3618. Distribution of money available to districts—formula for apportionment of county funds. After the deduction of transportation reimbursements provided by law, the proceeds of the basic county twenty-four (24) mill common school levy as provided for in section 75-3706 and the proceeds of the basic special tax for high schools, as provided for in section 75-4516.1 shall each be separately distributed by the county superintendent to the respective districts in the county, and the county high school if there be one, in proportion to their needs under the foundation financial program. In all cases in which the proceeds of such basic county levy when added to interest and income moneys available to the respective districts, and other funds which must be used in support of the foundation financial program are insufficient to finance the foundation financial program, the proceeds of the basic county common school levy and the proceeds of the basic county special tax for high schools shall each be separately distributed in accordance with the following procedure; provided, however, that cash balances to the credit of the district at the end of the school year, after authorized reserves have been subtracted as well as outstanding warrants, shall be used by the district to reduce the levies on the district for the general fund after county and state equalization aid have been received:

1. Determine the ratio that the total funds available to all districts in the county in support of the foundation program (including proceeds of the basic county levy) bears to the total costs of the foundation program for all such districts.

2. Determine the ratio that the total funds available to each district in support of the foundation program (excluding all proceeds of the basic county levy) bears to the cost of the foundation program of each such district.

3. Districts in which the ratio as determined in (2) above exceeds the ratio in (1) above shall not be entitled to distribution of such county funds but shall be excluded from further consideration under this section.

4. After elimination of districts referred to in (3) above, determine the ratio that the total funds available to all remaining districts in the county in support of the foundation program (including proceeds of the basic county levy) bears to the total cost of the foundation program of all such remaining districts. Each remaining district shall then be entitled to distribution of funds from the basic county levy, which, when added to all other funds available to such district in support of the foundation program shall be sufficient to finance such proportionate part of its foundation program.

5. No district school shall be deprived of its needful share of either county levy by reason of it being nonaccredited.

6. No territory situated within the county shall be excluded from the distribution of the school funds of the county solely because such territory lies within the boundaries of a joint district.

History: En. Sec. 17, Ch. 199, L. 1949; amd. Sec. 1, Ch. 182, L. 1951; amd. Sec. 1, Ch. 272, L. 1955; amd. Sec. 4, Ch. 151, L. 1961; amd. Sec. 57, Ch. 147, L. 1963; amd. Sec. 8, Ch. 267, L. 1963; amd. Sec. 3, Ch. 198, L. 1965.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147 and once by Ch. 267. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 147, Laws 1963, substituted "interest and income moneys available to the respective districts" in the second sentence of the first paragraph for "all other funds available to the respective districts from the permanent school fund."

Chapter 267, Laws 1963, substituted "the proceeds of the basic county twenty-five (25) mill common school levy as provided for in section 75-3706 and the proceeds of the basic special tax for high schools, as provided for in section 75-4516.1" near the beginning of the section for "the proceeds of the county ten (10) mill common school levy and the proceeds of the county ten (10) mill special tax for high schools"; inserted "basic" before "county levy" near the beginning of the second sentence, before "county common school levy" and before "county special tax" later in the second sentence, and before "county levy" in each of paragraphs 1 and 2 and two places in paragraph 4; deleted "and the five (5) mill tax for elementary schools provided for in section 75-1723" after "county levy" near the beginning of the second sentence; deleted "the uniform district levy and" before "county and state equalization aid" near the end of the preliminary paragraph; and inserted "such" before "county funds" in paragraph 3.

The 1965 amendment reduced the common school levy from 25 to 24 mills.

75-3619. Formula for distribution of state funds. At any time when the total requirements of the several counties of the state for state equalization aid in support of the elementary school and high school foundation financial programs of the school districts within said counties shall exceed the funds available, the funds on hand shall, subject to the limitation hereinafter specified, be apportioned and paid out to the several county treasurers in accordance with the following procedure:

(1) Determine the ratio that the total funds available to all counties in the state in support of the foundation financial program (including the funds available for state equalization aid) bears to the total cost of the foundation financial program in all counties.

(2) Determine the ratio that the total funds available to each county in support of the foundation financial program (excluding any payment for state equalization aid) bears to the cost of the foundation financial program of all school districts of the county.

(3) Counties in which the ratio, as determined in (2) above, exceeds the ratio in (1) above, shall not be entitled to distribution of state equalization aid but shall be excluded from further consideration under this section.

(4) After elimination of counties referred to in (3) above, determine the ratio that the total funds available to all remaining counties in support of the foundation financial program (including the total amount available for state equalization aid), bears to the total cost of the foundation financial program of all such remaining counties. Each remaining county shall then be entitled to distribution of funds for state equalization aid, which, when added to all other funds available to such county in support of the foundation financial program, shall be sufficient to finance such proportionate part of the total foundation financial program of all school districts in the county.

The county superintendent of schools shall distribute the funds received by such county from the state for state equalization aid to the respective elementary districts and high schools in proportion to the needs of each respective elementary district and high school under the foundation financial program, such distribution to be made by applying to the receipts from the state for state equalization aid the formula provided in section 75-3618 for the distribution of the proceeds of basic county levies.

History: En. Sec. 18, Ch. 199, L. 1949; amd. Sec. 58, Ch. 147, L. 1963; amd. Sec. 9, Ch. 267, L. 1963; amd. Sec. 4, Ch. 198, L. 1965.

Amendments

Chapter 147, Laws 1963, substituted "state equalization aid" near the beginning of the section for "payment from the state public school equalization fund"; deleted "in said equalization fund" after "funds available" in the preliminary paragraph; substituted "for state equalization aid" for "in the equalization fund," "from the equalization fund," or "from the public school equalization fund" in paragraphs (1) and (2), twice in paragraph (4), and twice in the final paragraph; and substituted "of state equalization aid apportioned to any school district, when added to the amount of interest and income moneys apportioned to such school district" in the former proviso to paragraph (4) for "apportioned to any school district from said state public school equalization fund, when added to the amount apportioned to such school district from the permanent school fund, shall."

Chapter 267, Laws 1963, incorporated the changes made by Ch. 147, Laws 1963; inserted the proviso constituting the proviso before the numbered paragraphs; deleted from the end of paragraph (4) a proviso which (after amendment by Ch. 147, Laws 1963) read, "provided, however, that the amount of state equalization aid apportioned to any school district, when added to the amount of interest and income moneys apportioned to such school district not exceed fifty per cent (50%) of the total foundation program of such district"; and inserted "basic" before "county levies" at the end of the section.

The 1965 amendment deleted a former second paragraph, preceding paragraph (1), which read: "Provided that seventy per cent (70%) of state equalization aid shall be set aside for the common schools and thirty per cent (30%) of state equalization aid shall be set aside for high schools, and provided further that such allocation shall not prevent a transfer of

funds if revenues for the common schools shall be in excess of the foundation program requirement for common schools" and substituted "aid" for "fund" after "state equalization" in paragraph (3).

75-3620. State superintendent to give notice if state funds inadequate. On or before June 1, 1949, if the requirements of the several school districts of the state for state equalization aid shall exceed the moneys available, as soon as such facts shall have been ascertained, the state superintendent of public instruction shall certify to each county superintendent of schools the amount which will be available for state equalization aid for the school districts of his county, and the estimated deficiency of funds for state aid in support of these foundation financial programs and transportation budgets. The county superintendent, upon receipt of such certificate shall notify each school district clerk in his county of the information contained therein.

History: En. Sec. 19, Ch. 199, L. 1949; amd. Sec. 59, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "for state equalization aid" in two places in the first sentence for "for aid from the state public school equalization fund" and for "from said equalization fund"; and deleted "to said fund" after "exceed the moneys available" in the first sentence.

75-3621. Resolution to issue warrants—hearing. After July 1, 1949, the boards of trustees of any school district which will have insufficient funds to meet its approved budget for operating expense; including transportation expense, because of a deficiency in state equalization aid, may, by majority vote, adopt a resolution authorizing the issuance of warrants in excess of funds on hand for payment of budgeted expenses which shall not exceed, in the aggregate, the deficiency in payments of state equalization aid.

Such resolutions must be adopted at a regular or special meeting of the board, and notice of the time and place of such meeting and the text of the proposed resolution shall be given ten (10) days prior to the meeting by posting copies of such notice at three (3) public places in the district and by one (1) publication of such notice in a newspaper generally circulated in the district not less than ten (10) days prior to said meeting.

Any taxpayer on property within the district, and any parent or guardian of a school child residing in the district, may attend such meeting and be heard in support of or in opposition to such resolution. The deficiency of state equalization aid, evidenced by the certificate of the state superintendent, as provided for in section 75-3620 shall be sufficient cause for adoption of the resolution.

History: En. Sec. 20, Ch. 199, L. 1949; amd. Sec. 60, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "in state equalization aid" or "of state equalization aid" for "in the state public school equalization fund" after "deficiency" in the first paragraph, for "from said state fund" at the end of the first paragraph, and for "of the state public school equalization fund" in the second sentence in the third paragraph.

75-3624. State payments for children of employees residing at state institutions. (1) As used in this act "employee" means an employee of a

public institution as defined in section 80-1203, R. C. M. 1947, who resides on the property of the public institution.

(2) A school district shall receive annually from moneys available for state equalization aid one hundred fifty dollars ($150.00) for each elementary pupil, and two hundred fifty dollars ($250.00) for each high school pupil, whose parents are employees of an institution located in the school district where the pupil attends school or in a school district which has a tuition agreement with the district where the pupil attends school.

(3) The school board of a school district which is eligible for such aid shall apply to the state superintendent of public instruction.

(4) Payments received under this act shall be deposited to the credit of the general fund of the school district. Such payments shall not be considered as part of normal state equalization aid.

History: En. Sec. 1, Ch. 101, L. 1965.

Compiler's Note

Section 80-1203, referred to in subsection (1) of this section, was repealed by Sec. 101, Ch. 199, Laws 1965. However, the same institutions are now listed in section 80-1403.

Title of Act

An act providing for payments by the state to school districts if children of a state employee who resides on the property of a state institution attend school in the district.

CHAPTER 37—FINANCE

Section 75-3701. Public school fund.
75-3706. Common school levy.
75-3722. Duties of county treasurer.

75-3701. (1201) Public school fund. The principal of the public school fund shall be carried by the state treasurer as a subfund in the trust and legacy fund and shall remain irreducible and permanent. That said fund shall be derived from the following sources, to wit: Appropriations and donations by the state; donations and bequests by individuals to the state or common schools; the proceeds of land and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of timber, stone, materials, or other property from school lands other than those granted for specific purposes, and all moneys other than rental recovered from persons trespassing on said lands; five per centum (5%) of the proceeds of the sale of public lands lying within the state which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section 15 of the Enabling Act; the principal of all funds arising from the sale of lands and other property which have been and may be hereafter granted to the state for the support of common schools, and such other funds as may be provided by the legislative enactment.

History: Ap. p. Sec. 1940, Pol. C. 1895; amd. Sec. 11, p. 133, L. 1897; re-en. Sec. 993, Rev. C. 1907; re-en. Sec. 2000, Ch. 76, L. 1913; re-en. Sec. 1201, R. C. M. 1921; amd. Sec. 223, Ch. 147, L. 1963.

Amendment

The 1963 amendment rewrote the first sentence, which previously read: "The principal of the state school fund shall remain irreducible and permanent."

75-3706. (1202) **Common school levy.** In addition to the provisions for the support of the common schools, hereinbefore provided, it shall be the duty of the county commissioners of each county in the state to levy an annual basic tax of twenty-four (24) mills on the dollar of the taxable value of all taxable property within the county, which levy shall be made at the time and in the manner provided by law for the levying of taxes for county purposes, which tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected; provided that if a basic levy of less than twenty-four (24) mills should be sufficient to meet the total of the approved budgets of all school districts within the county, then such lesser basic levy shall be made, but no school district within a county levying less than the basic twenty-four (24) mills shall receive any apportionment of state equalization aid; it shall be the duty of the board of county commissioners to levy, if necessary, an additional tax in such number of mills on the taxable value of all taxable property within the county as shall be required to provide the foundation program for all school districts within the county. The county superintendent shall apportion the proceeds of such additional tax levy to each school district within the county after apportionment of the basic county common school levy as provided in section 75-3618 and the state equalization aid as provided in section 75-3619.

For the further support of the common schools, there shall also be set apart by the county treasurer all moneys paid into the county treasury arising from all fines for violations of law, unless otherwise specified by law. Such moneys shall be forthwith paid into the county treasury by the officer receiving the same, and be added to the yearly school fund raised by taxation.

History: Ap. p. Sec. 44, p. 630, Cod. Stat. 1871; re-en. Sec. 43, p. 132, L. 1874; re-en. Sec. 1130, 5th Div. Rev. Stat. 1879; re-en. Sec. 1902, 5th Div. Comp. Stat. 1887; amd. Sec. 1940, Pol. C. 1895; amd. Sec. 1940a, p. 134, L. 1897; amd. Sec. 1, p. 12, L. 1901; amd. Sec. 1, Ch. 51, L. 1907; re-en. Sec. 994, Rev. C. 1907; amd. Sec. 2001, Ch. 76, L. 1913; amd. Sec. 31, Ch. 196, L. 1919; re-en. Sec. 1202, R. C. M. 1921; amd. Sec. 1, Ch. 123, L. 1929; amd. Sec. 1, Ch. 273, L. 1947; amd. Sec. 11, Ch. 199, L. 1949; amd. Sec. 10, Ch. 267, L. 1963; amd. Sec. 5, Ch. 198, L. 1965.

Amendments

The 1963 amendment inserted "basic" before "tax" or "levy" in three places; increased the specified levy from ten to twenty-five mills; made minor changes in phraseology; and added to the first paragraph the words "it shall be the duty of the board of county commissioners to levy, if necessary, an additional tax in such number of mills on the taxable value of all taxable property within each school district as shall be required to provide the foundation program for such school district."

The 1965 amendment reduced the specified levy from 25 to 24 mills; substituted "of state equalization aid" for "from the state public school equalization fund" after "apportionment"; substituted "the county" for "each school district" after "taxable property within" near the end of the first sentence; substituted "all school districts within the county" for "such school district" at the end of the first sentence of the first paragraph; and added the second sentence to the first paragraph.

75-3709. (1205) **Purposes for which money may be used.**

References

Wyatt v. School District No. 104, — M —, 417 P 2d 221, 224.

75-3722. (1213) Duties of county treasurer. It shall be the duty of the county treasurer of each county:

1. To receive and hold all school moneys and to keep a separate account of their disbursements to the several school districts which shall be entitled to receive them according to the apportionment of the county superintendent. A separate account shall be maintained for each fund supported by a county-wide levy for a specific, authorized purpose, including (1) the basic county mill levy for elementary schools as provided in section 75-3706, (2) the basic special tax for high schools as provided in section 75-4516.1, (3) the county levy for high school transportation as provided in section 75-3414, (4) the county levy for the high school retirement systems as provided in sections 68-603 and 75-2709, and such other county levy as may be required.

2 to 8. * * * [Same as parent volume.]

History: Ap. p. Sec. 1880, Pol. C. 1895; re-en. Sec. 941, Rev. C. 1907; amd. Sec. 2010, Ch. 76, L. 1913; re-en. Sec. 1213, R. C. M. 1921; amd. Sec. 1, Ch. 144, L. 1929; amd. Sec. 1, Ch. 62, L. 1961; amd. Sec. 11, Ch. 267, L. 1963.

Amendment

The 1963 amendment substituted clauses (1) and (2) in the second sentence of paragraph 1 for clauses reading, "(1) the county ten-mill levy for elementary schools, (2) the county ten-mill levy for high schools"; and added the words "and such other county levy as may be required" at the end of paragraph 1.

CHAPTER 38—EXTRA TAXATION FOR SCHOOL PURPOSES

Section 75-3801. District school taxes—election.
75-3806. Building reserve fund—election.

75-3801. (1219) District school taxes—election. (1) Whenever the board of trustees of any school district shall deem it necessary to raise money by taxation in excess of the levy required to meet its maximum budgets as specified in section 75-1713.1, for the purpose of maintaining the schools of said district, or building, altering, repairing or enlarging any schoolhouse or houses of such district, for furnishing additional school facilities for said district, or for any other purpose necessary for the proper operation and maintenance of the schools of said district, said board of trustees shall determine and fix the amount necessary and required for such purpose or purposes in addition to the maximum budgets hereinbefore provided for, and it shall submit the question of an additional levy to raise said excess amount to the qualified registered electors residing within the district who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes, either at the regular annual election held in said district, or at a special election called for that purpose by the board of trustees of said district. Such election shall be called by resolution in the same manner as provided for other school elections, and shall be held prior to August first.

(2) Whenever the board of trustees of any district or county high school shall deem it necessary to raise money by taxation in excess of the levy required to meet its maximum budgets as specified in section 75-4518.1 for the purpose of maintaining the high schools of said district

or the county high school, or building, altering, repairing or enlarging any schoolhouse or houses of such district or county high school, for furnishing additional school facilities for said district, or county high school, or for any other purpose necessary for the proper operation and maintenance of the schools of said district, or county high school, said board of trustees shall determine and fix the amount necessary and required for such purpose or purposes in addition to any other legal levies on the district, including the approved addition to its foundation program hereinbefore provided for, and in the case of the district high school it shall submit the question of an additional levy to raise said amount to the qualified registered electors residing within the district who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes, either at the regular annual election held in said district or at a special election called for that purpose by the board of trustees of said district. In the case of the county high school the board shall submit the question of an additional levy to raise said amount to the qualified registered electors residing within the county, exclusive of those residing within any district maintaining a district high school in the county, who are taxpayers and whose names appear upon the last completed assessment roll in the county for state, county and school taxes, either at the regular annual elections held in said districts, or special elections called for that purpose by the board of trustees of said county high school. Such election shall be called by resolution in the same manner as provided for other school elections, and shall be held prior to August first; and provided, further, that the provisions of this act shall not prevent the voting of a special levy on a high school district as provided for in chapter 130, Laws of 1949 (75-4609).

History: En. Sec. 1, Ch. 93, L. 1917; re-en. Sec. 1219, R. C. M. 1921; amd. Sec. 1, Ch. 120, L. 1925; amd. Sec. 1, Ch. 144, L. 1935; amd. Sec. 12, Ch. 199, L. 1949; amd. Sec. 1, Ch. 210, L. 1951; amd. Sec. 2, Ch. 247, L. 1953; amd. Sec. 12, Ch. 267, L. 1963; amd. Sec. 1, Ch. 140, L. 1967.

Amendments

The 1963 amendment substituted "its maximum budgets as specified in section 75-1713.1" near the beginning of subsection (1) for "its foundation program and approved additions thereto within the limitations of thirty per cent (30%) hereinbefore specified"; substituted "in addition to the maximum budgets" later in subsection (1) for "in addition to the five (5) mill levy and the approved addition to its foundation program"; and substituted "its maximum budgets as specified in section 75-4518.1" near the beginning of subsection (2) for "its foundation program and approved additions thereto within the limitation hereinbefore specified."

The 1967 amendment inserted "registered" before "electors" throughout this section.

75-3806. Building reserve fund—election. (1) The board of trustees of any school district may, whenever a majority thereof so decide, submit to the electors of the district the question whether the board shall be authorized to create a building reserve fund of a certain amount, to be raised within a specified number of years, for the purpose of the erection, equipping or enlargement of school buildings, teacherages, garages, or other buildings needed for school purposes. The reserve fund shall not exceed five (5) per cent of the value of the taxable property in the district. If created, the fund shall be held by the county treasurer and by him

credited to the school district creating same, to be used for the purposes specified in this section and not for any other purpose. Whenever the county has under its control any moneys credited to the fund from taxation or from the sale of bonds by a school district for a building reserve fund for which there is no immediate demand, which in the judgment of the governing body of the school district it would be advantageous to invest in any interest-bearing deposits in a state or national bank insured by the F.D.I.C., or obligations of the United States of America, either short-term or long-term, such governing body may in its discretion direct the county treasurer to make such investments. Interest earned from such investments shall be credited to the sinking fund of the school district notwithstanding the provisions of subsection (6) of section 16-2618.

(2) The election shall be held in the manner prescribed for election on the issuance of school bonds, except that the ballots must contain the words "building reserve fund, yes" and "building reserve fund, no." If the majority of the votes at the election are "building reserve fund, yes," the clerk of the district shall immediately notify the board of county commissioners and the county treasurer, and the board of county commissioners shall thereafter levy annually the tax necessary to raise the funds for the number of years specified. The funds shall be kept in the custody of the county treasurer until sufficient funds have been raised to commence the building contemplated by the school district.

(3) At any time after the raising of a building reserve fund has been commenced by any school district, the board of school trustees may submit to the electors of the district, as provided by law, the question whether the board shall be authorized to issue bonds of the district for the balance of the building reserve fund. If both reserve funds and bond funds are needed for the purposes authorized herein, the reserve funds must be used prior to using funds for the issuance and sale of bonds. If the bonds are authorized, the annual building reserve fund levy shall be discontinued by the board of county commissioners when the levy is commenced for payment of the bonds.

History: En. Sec. 1, Ch. 85, L. 1967.

Title of Act

An act authorizing elections in school districts for a school district building reserve fund not to exceed five per cent of taxable value of school district property to be used for buildings and equipment, providing for tax levy, requiring election for issuance of school bonds within limitation of law if required and allowing for investment of funds.

CHAPTER 39—BONDS

Section 75-3904. Limitation of term of bonds—interest—redemption.
75-3908. Petition and election required for bond issues for other purposes.

75-3904. (1224.4) **Limitation of term of bonds—interest—redemption.** No school district bonds shall be issued for a term longer than twenty (20) years, provided, however, that bonds issued to refund or redeem outstanding bonds shall not be issued for a longer term than ten (10) years, except when the unexpired term of the bonds to be refunded is in excess of ten (10) years, in which case the refunding bonds may be issued for such unexpired term. All bonds issued for a longer term than five (5)

years shall be redeemable at the option of the school district five (5) years from the date of issue and on any payment due date thereafter before maturity and shall be so stated on the face of the bonds. The interest shall not exceed six per centum (6%) and shall be payable semiannually.

History: En. Sec. 4, Ch. 147, L. 1927; amd. Sec. 1, Ch. 25, L. 1931; amd. Sec. 2, Ch. 178, L. 1939; amd. Sec. 1, Ch. 273, L. 1967.

Amendments

The 1967 amendment substituted the second sentence for one which read "All bonds shall be redeemable when one-half of the term for which they were issued has expired and on any interest due date thereafter prior to their maturity, and such redemption right must be stated on the face of each bond."

Effective Date

Section 2 of Ch. 273, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

75-3908. (1224.8) Petition and election required for bond issues for other purposes. School district bonds for any other purpose than those stated in sections 75-3906 and 75-3907, shall not be issued unless authorized at a duly called election at which the question of issuing such bonds was submitted to the electors of the school district; and no such election shall be called unless proceedings have been commenced by resolution upon the part of the board of trustees of the school district of its own motion and without any petition being filed therefor or unless there has been presented to the board of trustees a petition asking that such election be held and such question be submitted, signed by not less than twenty per centum (20%) of the qualified registered electors residing within the school district, who are taxpayers upon property therein and whose names appear on the last completed assessment roll for state, county and school district taxes.

History: En. Sec. 8, Ch. 147, L. 1927; amd. Sec. 1, Ch. 54, L. 1967.

Amendments

The 1967 amendment inserted "proceedings * * * being filed therefor or unless" after "shall be called unless."

Repealing Clause

Section 2 of Ch. 54, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 41—HIGH SCHOOLS—COUNTY—JUNIOR AND DISTRICT—JOINT SCHOOL SYSTEMS

Section 75-4120. Authority to abolish or to unify.
75-4120.1. Procedure for unification of county high school.
75-4120.2. Appointment and terms of additional trustees after unification—county as high school district.
75-4120.3. Adoption of budget after unification.
75-4121. Petition to abolish county high school to be filed.
75-4122. Commissioners to submit question.
75-4123. Publication of notice and preparation of pollbooks.
75-4124. Further notice required—manner of holding election—ballots.
75-4125. Action by board of county commissioners when election favors abolishing county high school.
75-4126. When election favors retaining high school.
75-4127. Disposition of unexpended funds of county high school after abolishment or unification.
75-4128. Disposition of property of county high school when abolished or unified—inventory—appraisal—compensation of appraisers.

75-4130. Board of county commissioners to sell—manner of sale—execution of deeds.
75-4133. Disposition of taxes levied for county high school but unpaid before abolishment or unification.
75-4134. Liquidation of bonded indebtedness of county high school upon abolishment or unification.
75-4138. School districts may establish high schools and county high schools a branch—transportation.
75-4139. Approval of superintendent of public instruction—how secured.
75-4146. Expenditure of money for transportation of high school pupils.

75-4120. (1262.19) **Authority to abolish or to unify.** Any county in which a county high school has been established may abolish such county high school or unify it with and make it a part of the public school system of the school district in which it is located and dispose of all property belonging thereto in the manner provided in this chapter.

History: En. Sec. 19, Ch. 148, L. 1931; amd. Sec. 1, Ch. 261, L. 1963.

Amendment

The 1963 amendment inserted "or unify it with and make it a part of the public school system of the school district in which it is located."

75-4120.1. Procedure for unification of county high school. A county high school may be unified with and made a part of the school district in which the county high school is located in the following manner: If the board of trustees of the county high school and the board of trustees of the school district in which the county high school is located shall each pass a resolution requesting unification and an election thereon and shall each file copies of the respective resolutions with the county superintendent of schools, or if a petition signed by ten per cent (10%) of the qualified electors of the high school district where the county high school is located, or of the county if it is not divided into high school districts, is filed with the county superintendent requesting that an election on the question of unification be held, the county superintendent within not less than twenty (20) nor more than thirty (30) days shall cause notice of election to be given by posting and publication. The question shall be submitted to the qualified electors of the high school district where the county high school is located or to the qualified electors of the county if it is not divided into high school districts. The notice shall be posted in three (3) public places in each school district of the high school district, or of the county if it is not divided into high school districts, and at least one (1) voting place shall be provided in each such school district. The notice shall also be published once in a newspaper published in the county and having general circulation therein. The notice shall specify the voting places, the time when the polls shall be open and that the question to be submitted is FOR or AGAINST unification.

If a majority of the votes cast at such election shall be FOR unification the county superintendent shall make an order that unification shall be effective the following July 1.

If a majority of the votes cast at such election shall be AGAINST unification the county superintendent shall so declare.

Persons qualified to vote for school trustees shall be eligible to vote at the election provided for herein and as far as applicable the statutes relating to the election of school trustees shall govern such election.

History: En. Sec. 1, Ch. 37, L. 1965.

Title of Act

An act changing the procedure for unifying a county high school with the school district in which the county high school is located; amending sections 75-1421, 75-4122, 75-4123, 75-4124, 75-4125, and 75-4126, R. C. M. 1947.

75-4120.2. **Appointment and terms of additional trustees after unification—county as high school district.** If unification is accomplished, immediately after the effective date the county superintendent of schools in those counties which have been divided into high school districts shall appoint additional board of trustee members in the manner provided by section 75-4601, R. C. M. 1947, if the majority of the school districts lying within the high school district so request. If the county has not been divided into high school districts, the county shall immediately upon unification, become a high school district in its entirety in the same manner as if action had been taken under section 75-4602, R. C. M. 1947. Members appointed by the county superintendent of schools shall hold office until the next annual school election when there shall be elected a trustee to replace each appointed member.

History: En. Sec. 2, Ch. 37, L. 1965.

75-4120.3. **Adoption of budget after unification.** If unification is accomplished, the board of trustees of the district which was unified with the county high school shall adopt a high school budget for the next fiscal year on the fourth Monday in June preceding the effective date of unification.

History: En. Sec. 3, Ch. 37, L. 1965.

75-4121. (1262.20) **Petition to abolish county high school to be filed.** Between the first day of July and the first day of September in any year in which a general election is held in the state of Montana twenty per centum (20 %) or more, of the qualified registered electors of any county maintaining a county high school who are also assessed in their own names on the assessment books of the county for that year upon real or personal property may file their written petition with the county clerk of the county praying that the county high school be abolished.

History: En. Sec. 20, Ch. 148, L. 1931; amd. Sec. 2, Ch. 261, L. 1963; amd. Sec. 4, Ch. 37, L. 1965.

Amendments

The 1963 amendment inserted "registered" between "qualified" and "electors"; and added "or praying that the county high school be unified with and made a part of the public school system of the school district in which said county high school is located" at the end of the section.

The 1965 amendment deleted the words that had been added at the end of the section by the 1963 amendment.

75-4122. (1262.21) **Commissioners to submit question.** At the first regular monthly meeting of the board of county commissioners of the county immediately following such filing the petition shall be called to the attention of the board by the county clerk; and the board shall im-

mediately direct the submission to the registered voters of the county at the ensuing general election for that year of the question whether the county high school of the county should be abolished.

History: En. Sec. 21, Ch. 148, L. 1931; amd. Sec. 3, Ch. 261, L. 1963; amd. Sec. 5, Ch. 37, L. 1965.

Amendments

The 1963 amendment inserted "of the question appearing in the petition" after "submission"; and deleted from the end of the section the words "of the question whether the county high school of the county should be abolished."

The 1965 amendment deleted the words inserted by the 1963 amendment and restored the words deleted by the 1963 amendment.

75-4123. (1262.22) **Publication of notice and preparation of pollbooks.** The county clerk of the county shall publish a notice of the filing and purpose of the said petition, which notice shall contain the question of abolishing the county high school. The notice shall also state that the said question will be submitted at the ensuing general election. The notice shall be published at least once a week for four successive weeks in some newspaper of general circulation published in the county, and, if there be none, in such newspaper as the board of county commissioners may designate, the first publication of such notice to be made between September 1 and September 15 of the said year. The county clerk of said county shall prepare suitable pollbooks containing the names of all registered electors at the expense of the county.

History: En. Sec. 22, Ch. 148, L. 1931; amd. Sec. 4, Ch. 261, L. 1963; amd. Sec. 6, Ch. 37, L. 1965.

Amendments

The 1963 amendment divided the former text into three sentences; inserted "which notice shall contain the question of either abolishing the county high school or of unifying the county high school with and making it a part of the public school system of the school district in which it is located" at the end of the first sentence; substituted the second sentence for "and that the question of abolishing the county high school in the county will be submitted at the ensuing general election"; inserted "The notice shall be published" at the beginning of the third sentence; and added the fourth sentence.

The 1965 amendment substituted "abolishing the county high school" at the end of the first sentence for "either abolishing the county high school or of unifying the county high school with and making it a part of the public school system of the school district in which it is located."

75-4124. (1262.23) **Further notice required—manner of holding election—ballots.** Further notice of the submission of the question shall be given, and such question shall be submitted to the registered voters of the county at the ensuing general election in November, and the votes cast thereon canvassed and returns thereof made in the manner provided by law for the election of county officers at that election, subject, however, to the following special requirements:

The votes for or against abolishment of the county high school shall be cast by ballot in substantially the following form.

Abolishment of county high school.

☐ For the abolishment of the county high school.

☐ Against the abolishment of the county high school.

An elector may vote for the question submitted to him for consideration by placing an "X" in the square immediately before the words "For the abolishment of the county high school"; and a ballot so marked and

cast shall be counted in favor of abolishing the county high school. An elector may vote against the question submitted to him for consideration by placing an "X" in the square immediately preceding the words "Against the abolishment of the county high school"; and a ballot so marked and cast shall be counted against abolishing the county high school.

History: En. Sec. 23, Ch. 148, L. 1931; amd. Sec. 5, Ch. 261, L. 1963; amd. Sec. 7, Ch. 37, L. 1965.

Amendments

The 1963 amendment substituted for the second paragraph a paragraph reading, "If the question is to abolish the county high school, the votes for or against abolishment of the county high school shall be cast by ballot in substantially the following form under A. But if the question is to unify the county high school and make it a part of the public school system of the school district in which the county high school is located, then a ballot similar to form B shall be used"; inserted, with a designation "A", the caption for the ballot form on abolishment of the county high school; inserted a ballot form B on the question of unification of the county high school; substituted "the question submitted to him for consideration" in the final paragraph for "abolishing the county high school" and "the abolishment of the county high school"; and inserted "(or unification)" or "(or unifying)" after "abolishment" or "abolishing" in four places in the final paragraph.

The 1965 amendment restored the second paragraph to substantially its original form; deleted "A" from the caption for the ballot form on abolishment of the county high school; deleted ballot form B on unification of the county high school; and deleted from the final paragraph the words "(or unification)" and "(or unifying)" that had been inserted by the 1963 amendment.

75-4125. (1262.24) **Action by board of county commissioners when election favors abolishing county high school.** If a majority of all votes cast at such general election upon the question of the abolishment of the county high school shall be in favor of abolishing the same the board of county commissioners of the county at its first regular meeting in December following the election shall make and enter at large upon its minutes an abstract of the votes so cast and a resolution that in accordance therewith on and after July 1st of the year immediately following the county high school of the county shall be, and is thereby abolished.

History: En. Sec. 24, Ch. 148, L. 1931; amd. Sec. 6, Ch. 261, L. 1963; amd. Sec. 8, Ch. 37, L. 1965.

Amendments

The 1963 amendment substituted "question of the abolishment or the unification of the county high school with and making it a part of the public school system of the school district in which the county high school is located shall be in favor of abolishing or unifying the same" in the first part of the section for "question of the abolishment of the county high school shall be in favor of abolishing the same"; added at the end of the section the words "or, in case of unification, that the county high school shall be and is thereby unified with and made a part of the public school system of the school district in which the county high school is located, and that the board of trustees of said county high school shall be and is thereby dissolved, and that its powers and duties shall be and are thereby assigned to the board of trustees of the school district with which the county high school was unified, provided, that the board of trustees of said school district shall have, and is hereby given the power and authority to prepare and adopt the preliminary high school budget for the ensuing fiscal year beginning on said July 1st"; and made a minor change in phraseology.

The 1965 amendment restored the section to its original form except for a minor change in phraseology.

75-4126. (1262.25) **When election favors retaining high school.** But if a majority of all votes cast at such election shall be against the abolishment of the county high school a similar abstract of the votes shall in like manner be entered by the board of county commissioners at large

upon their minutes at its December meeting aforesaid; and no further submission of the question of abolishing the county high school shall be had in that county for at least two (2) years thereafter, provided that if an election against the abolishment of the county high school has been had within any county within two years prior to the enactment of this statute, that the question shall not again be resubmitted for at least two (2) years after the date that this act becomes effective.

History: En. Sec. 25, Ch. 148, L. 1931; amd. Sec. 7, Ch. 261, L. 1963; amd. Sec. 9, Ch. 37, L. 1965.

Amendments

The 1963 amendment inserted "or the unification" and "or unifying" after "abolishment" and "abolishing"; and reduced the waiting period for a new election from four to two years from the previous election or from the effective date of the act.

The 1965 amendment deleted the phrases "or the unification" and "or unifying" that had been inserted by the 1963 amendment.

Effective Date

Section 10 of Ch. 37, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 22, 1965.

75-4127. (1262.26) **Disposition of unexpended funds of county high school after abolishment or unification.** When any county high school is abolished pursuant to law all unexpended moneys belonging to such high school shall be applied and paid as follows:

1. To the payment of outstanding warrants issued by the board of trustees of the county high school.

2. To the payment of the interest and principal of outstanding bonds issued for county high school purposes.

3. To the credit of the funds of the school districts of the county which maintain and conduct accredited high school classes, the apportionment among such districts to be made according to the average daily attendance as determined by the county superintendent of schools at such accredited high school classes for the school year immediately next preceding the effective date of the abolishment of the county high school. But if the school district in which the county high school was located shall establish an approved high school, or approved high school classes, for the school year immediately following upon the effective date of the abolishment of the county high school such school district shall share in the distribution of any unexpended balance of the funds of the county high school upon the basis of the average daily attendance at the county high school in approved high school classes during the last school year of its existence. When any county high school is unified pursuant to the provisions of this chapter, all unexpended moneys belonging to such high school, other than funds that were raised for the purpose of paying the interest and principal of outstanding bonds issued for county high school purposes, shall be paid in the following manner:

1. To the payment of the outstanding warrants and current invoices for material and services purchased by the board of trustees of the county high school.

2. Any remainder shall be deposited to the credit of the school district in which the county high school was located to be used in the budget for the operation of the district high school.

History: En. Sec. 26, Ch. 148, L. 1931; amd. Sec. 8, Ch. 261, L. 1963.

Amendment

The 1963 amendment added the final sentence and the two numbered clauses subsidiary thereto.

75-4128. (1262.27) **Disposition of property of county high school when abolished or unified—inventory—appraisal—compensation of appraisers.** When any county high school is abolished all its real and personal property, other than its moneys, shall be disposed of in the following manner: The district court of the county in which such high school was located on application of the board of county commissioners shall appoint three competent persons, residents of the county, to inventory and appraise all such real and personal property of the said county high school. In making such appraisement the appraisers shall take into account ordinary depreciation, and the adaptability or lack of adaptability of the buildings, grounds, and other real estate, and of the various articles of personal property to any special use for which such property may be sold. The appraisers shall be allowed their necessary expenses, including mileage at the rate of ten (10) cents per mile from their respective residences to the place where the property of the county high school is found, and return, expenses and mileage to be paid out of any moneys belonging to the county high school, or, if none, out of the general fund of the county, upon the order of the district court. When any county high school is unified with and made a part of the public school system of the school district in which it is located according to this chapter, all its real and personal property, including all appurtenances and hereditaments, except as otherwise provided for in this chapter, shall become and remain the property of the school district with which it was unified without an inventory and appraisement.

History: En. Sec. 27, Ch. 148, L. 1931; amd. Sec. 9, Ch. 261, L. 1963.

Amendment

The 1963 amendment added the final sentence.

75-4130. (1262.29) **Board of county commissioners to sell—manner of sale—execution of deeds.** Upon the adoption or approval of the appraisement the board of county commissioners of the county shall proceed to sell all of such property after notice and in the manner provided by law for the sale by the board of other county property; and upon any such sale of all or any portion of such property pursuant to law and the payment to the county treasurer of the purchase price the said board shall be fully authorized and empowered to make and execute in the name of the county all necessary and appropriate deeds, bills of sale and other instruments for the conveyance of title to the purchaser or purchasers; provided, that if the county high school was unified with and made a part of the public school system of the school district in which it was located pursuant to the provisions of this chapter, the board of county commissioners of the county shall make and execute in the name of the county all necessary and appropriate deeds, bills of sale and other instruments for the conveyance of title to the school district with which the county high school was unified.

History: En. Sec. 29, Ch. 148, L. 1931; amd. Sec. 10, Ch. 261, L. 1963.

Amendment

The 1963 amendment added the proviso at the end of the section.

75-4133. (1262.32) **Disposition of taxes levied for county high school but unpaid before abolishment or unification.** All taxes levied for the support of any county high school which is thereafter abolished before such taxes are collected shall, when collected, be paid over into the fund created by the special high school tax levied in the county, and apportioned and disbursed as a part of such fund, and, if there be no such fund, then into the general school fund of the county, provided, however, that if any county high school is unified, all taxes levied for the county high school shall be paid to the school district for the support of the district high school established by the unification.

History: En. Sec. 32, Ch. 148, L. 1931; amd. Sec. 11, Ch. 261, L. 1963.

Amendment

The 1963 amendment added the proviso at the end of the section.

75-4134. (1262.33) **Liquidation of bonded indebtedness of county high school upon abolishment or unification.** If the funds of any county high school which has been abolished, and the proceeds of the sale of all its property according to law, are not sufficient to pay all the outstanding warrants, bonds and other legal obligations of the said high school, it shall be the duty of the county commissioners and of the board of trustees of the said high school annually to ascertain the amount of such warrants, bonds and other outstanding indebtedness and to make such annual tax levies according to law as may be necessary to pay and retire such warrants, bonds and/or other outstanding obligations, all in the same manner and by the same means as though the said county high school had not been abolished; and for such purpose and until such indebtedness be fully paid and discharged the board of trustees of the said county high school shall be continued in existence and shall function, and together with the board of commissioners of the county shall exercise and have the same powers for retiring and paying such indebtedness as though the said county high school were still functioning and in existence. When a county high school is unified with and made a part of the public school system of the school district in which it is located, all outstanding bonds shall remain the liability of the county or that portion of the county against which the bonds were originally issued. It shall be the duty of the county commissioners and the board of trustees of the school district with which the county high school was unified to ascertain annually the amount of such bonds and to make such annual tax levies according to law as may be necessary to pay and retire such bonds in full, all in the same manner and by the same means as though the said county high school had not been unified.

History: En. Sec. 33, Ch. 148, L. 1931; amd. Sec. 12, Ch. 261, L. 1963.

Amendment

The 1963 amendment added the second and third sentences.

75-4138. (1262.37) **School districts may establish high schools and county high schools a branch—transportation.** Whenever the interests

of any school district or a county high school require it, the board of trustees of the district or the board of trustees of the county high school, with the approval of the superintendent of public instruction, may establish a high school for the district or a branch of the county high school and make the provisions for its quarters, equipment, and teaching force in the manner provided for in section 75-4139, provided, if any school district acquires the real and all other property of a former county high school by means of unification pursuant to this chapter, the board of trustees of such school district shall have the authority by resolution to establish a district high school using therefor the real and other property of the former county high school without further action or any approval and the high school established shall be the high school of the high school district in which located, if the county has been divided into high school districts.

History: En. Sec. 37, Ch. 148, L. 1931; amd. Sec. 1, Ch. 159, L. 1939; amd. Sec. 1, Ch. 152, L. 1963; amd. Sec. 13, Ch. 261, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 152 and once by Ch. 261. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating the changes made by both.

Amendments

Chapter 152, Laws 1963, inserted "or a county high school," "or the board of trustees of the county high school," and "for the district or a branch of the county high school" in the first part of the section; and made a minor change in phraseology.

Chapter 261, Laws 1963, substituted the proviso for two former provisos, for text of which see parent volume.

Repealing Clause

Section 14 of Ch. 261, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 15 of Ch. 261, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 13, 1963.

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

75-4139. (1262.38) **Approval of superintendent of public instruction—how secured.** When the board of trustees of any school district desires to establish a high school, or a county high school desires to establish a branch of the county high school, it shall petition the superintendent of public instruction, prior to June first of the current year for the permission to do so, setting forth in writing the facts regarding the enrollment in the elementary grades, the distance to other high schools, the road conditions, the taxable valuation of the district, the building facilities and such other information as the state superintendent may require. An investigation shall be made thereafter by a designated representative of the superintendent of public instruction and his report on the petition filed with it before the petition is acted upon. The superintendent of public instruction must have passed favorably on any such petition before the high school or branch of the county high school proposed may be established by the district.

When the establishment of a high school or a branch of the county high school has been approved in accordance with the provisions of this section, the county superintendent of schools shall immediately investigate

to find the number of students who will probably attend such newly established high school or branch of the county high school. This number of students shall be used as a basis for making out the budget for the first year of operation. He shall then assist the board of trustees of the school district establishing such high school or the trustees of a county high school establishing a branch, in preparing and submitting a budget for the maintenance of such high school or branch of the county high school. Said budget shall, otherwise than specified above, be prepared, submitted, approved and distributed in the same manner as other high school budgets are prepared, submitted, approved and distributed.

History: En. Sec. 38, Ch. 148, L. 1931; amd. Sec. 1, Ch. 9, L. 1933; amd. Sec. 2, Ch. 152, L. 1963.

Amendment

The 1963 amendment inserted "or a county high school desires to establish a branch of the county high school" in the first sentence of the section; inserted "or branch of the county high school" or "or a branch of the county high school" in the last sentence of the first paragraph and in three places in the second paragraph; and inserted "or the trustees of a county high school establishing a branch" in the third sentence of the second paragraph.

Effective Date

Section 3 of Ch. 152, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

75-4146. (1262.44-A) **Expenditure of money for transportation of high school pupils.** Whenever any eligible high school pupil has been authorized to attend a high school situated in a county in another state and which county adjoins the state of Montana, as provided in section 75-4230, the board of trustees of the county high school, if there be a county high school for the county in which the pupil resides, or if there be no such county high school then the board of trustees of the school district in which such pupil resides, may expend any moneys belonging to the county high school, or school district, as the case may be, for the purpose of either paying for transportation of such pupil from the home of such pupil to the high school in the other state which is to be attended, or for board, rent or tuition for such pupil while actually attending such school, in the same manner and to the same extent as such money might be expended for transportation, board, rent or tuition of such pupil if permission were given for attending a high school in another district in the county in which the pupil resides in accordance with the provisions of law.

History: En. Sec. 3, Ch. 217, L. 1939; amd. Sec. 1, Ch. 21, L. 1963.

Amendment

The 1963 amendment substituted "the state of Montana" for "the county in which such high school pupil resides" after "adjoins" near the beginning of the section; and, at the end of the section, substituted "provisions of law" for "provisions of section 75-4145."

CHAPTER 42—HIGH SCHOOLS—COUNTY—JUNIOR AND DISTRICT—JOINT SCHOOL SYSTEMS CONTINUED—VOCATIONAL EDUCATION

Section 75-4202. Establishment in districts where county high school is located.
75-4230. Attendance outside of county of pupil's residence—transfer of apportionment.
75-4246. Apportionment of funds for vocational education.

75-4202. (1262.53) **Establishment in districts where county high school is located.** A junior high school or junior high schools may be established by the school district in which any county high school is located in the manner provided in section 75-4201, provided that the board of trustees of the county high school already located in the district shall by resolution consent thereto. A junior high school, or junior high schools, may also, in like manner, be established by the county high school, provided that the board of trustees of the school district, in which the county high school is located, shall by resolution consent thereto. In no event, however, shall a junior high school be established unless the question has been submitted to the qualified electors of the district involved, and a majority of the electors vote in favor thereof.

History: En. Sec. 53, Ch. 148, L. 1931; amd. Sec. 1, Ch. 89, L. 1949; amd. Sec. 1, Ch. 262, L. 1965.

Amendment

The 1965 amendment added the last sentence.

75-4230. **Attendance outside of county of pupil's residence—transfer of apportionment.** The attendance of any eligible high school pupil at an accredited high school outside of the county of his residence, either within or without the state, must be authorized by the county superintendent of schools of the county of his residence when a pupil lives closer to a high school of another county than to any high school located in the county of his residence, or when due to road or geographical conditions it is impractical to attend the high school of his own district, and when proper application has been made to the county superintendent of schools by the parent or guardian of the pupil for whom such transfer is desired; provided, that the county superintendent of schools may at his discretion require a pupil obtaining such transfer to attend the high school nearest his residence.

In all other cases the county superintendent of schools may authorize at his discretion any eligible pupil to attend a high school in a county outside of his residence.

No payment shall be made for attendance in another state except where such attendance is in a high school in a county adjacent to the state of Montana.

Application for permission to attend a high school outside the county of residence shall be made to the county superintendent of the county of the pupil's residence before July 1, previous to the year of attendance, except in those cases where circumstances make this impossible. The county superintendent must then approve or disapprove these applications and notify the individuals concerned, and the high school to be attended, and the county superintendent of the county where the pupil will attend school. At the end of the school year attended and before July 15, the clerk of the school district operating the high school attended shall send to his county superintendent the name of all pupils from outside of the county attending his school, together with such pupils' home addresses and the number of days such pupils actually attended his high school, who in turn will transmit this information to the county superintendent of the pupils' residence.

Tuition for the year attended is hereby made an obligation of the county of residence for the following year. Before August 1 each year, the county superintendent of the county of residence of the pupils concerned shall make out a high school transfer budget. The total of such transfer budget shall be determined by multiplying the number of pupils attending high school outside of his county by three hundred dollars ($300) in the case of attendance at a high school with an average number belonging up to one hundred (100) pupils; two hundred seventy-five dollars ($275) in case of attendance at a high school with an average number belonging from one hundred one (101) to four hundred (400); and two hundred fifty dollars ($250) in case of attendance at a high school with an average number belonging over four hundred (400); provided further, that the pupil has attended at least forty (40) days.

The total of the transfer budget shall be subtracted from the receipts from the basic special tax for high schools as provided for in section 75-4516.1 before the remainder of such receipts is distributed to the high schools of the county. Such total of the transfer budget shall be held in a transfer fund separate and apart from other school funds and shall be allocated by the county treasurer upon instructions from the county superintendent.

In December of each year the county superintendent of the county of the pupil's residence shall notify his county treasurer of the amount to be transferred to each high school educating the pupil concerned, and the said county treasurer shall forthwith remit said amounts to the county treasurer of the county in which such high schools are located. The county treasurer receiving such transfers of money shall place the amount to the credit of the general fund of the high school concerned. Receipts by any high school for tuition are to be used against the needs of the budget after county and state aid have been received.

Whenever pupils are inmates of the Montana children's center at Twin Bridges and attend the public high school in Twin Bridges, the latter school shall receive from moneys available for state equalization aid four hundred dollars ($400.00) for each such pupil; provided, however, that this amount of tuition is not considered as a part of regular state equalization aid. Application for this tuition from the state is to be made in the same manner and at the same time as for regular state equalization aid.

Whenever pupils residing in Montana are approved for attendance in a high school in an adjoining state, and whenever pupils in an adjoining state are approved for attendance in a high school in Montana, the above schedule of tuition payments may be waived, and payments arrived at on the reciprocal basis with the state involved. The state superintendent of public instruction is hereby authorized to negotiate with the state superintendent of public instruction of each state involved in arriving at tuition payments, which may either be on a per pupil basis of a flat amount or on an actual cost basis.

History: En. Sec. 81, Ch. 148, L. 1931; amd. Sec. 4, Ch. 217, L. 1939; amd. Sec. 1, Ch. 219, L. 1943; amd. Sec. 1, Ch. 146, L. 1949; amd. Sec. 3, Ch. 106, L. 1951; amd. Sec. 1, Ch. 22, L. 1953; amd. Sec. 1, Ch. 70, L. 1959; amd. Sec. 2, Ch. 21, L. 1963; amd. Sec. 1, Ch. 162, L. 1963; amd. Sec. 13, Ch. 267, L. 1963; amd. Sec. 2, Ch. 127, L. 1965.

Compiler's Note

This section was amended three times in 1963, once by Ch. 21, once by Ch. 162, and once by Ch. 267. Chapter 267 included one of the changes made by Ch. 162, but otherwise none of the amendatory acts mentioned nor included the changes made by either of the others. Since the amendments do not appear to conflict, however, the compiler has made a composite section incorporating the changes made by all three amendments.

Amendments

Chapter 21, Laws 1963, substituted "another county" for "an adjoining county" after "lives closer to a high school of" near the middle of the first paragraph; and substituted "the state of Montana" for "the county of the student's residence" at the end of the third paragraph.

Chapter 162, Laws 1963, substituted "children's center" for "state orphans' home" in the eighth paragraph; and increased the reimbursement specified in the eighth paragraph from $250 to $400 per pupil.

Chapter 267, Laws 1963, substituted "the basic special tax for high schools as provided for in section 75-4516.1" near the beginning of the sixth paragraph for "the county ten (10) mill levy for high schools"; incorporated in the eighth paragraph the change in the reimbursement rate made by Ch. 162, Laws 1963; substituted "shall receive from moneys available for state equalization aid" in the eighth paragraph for "shall be reimbursed from the state public school equalization fund at the rate of"; and inserted "regular" in the proviso to the first sentence in the eighth paragraph.

The 1965 amendment increased tuition by $50 in each of the three classes of schools mentioned in the fifth paragraph.

75-4231. (1262.83) **General powers and duties of boards of trustees.**

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

75-4246. (1262.98) **Apportionment of funds for vocational education.** The state board of education shall apportion all moneys appropriated for vocational education, and any money received for vocational education from the federal government under the acts of Congress mentioned in section 75-4241, or otherwise to the public elementary schools and public high schools of the state in which there are established and maintained courses for vocational training in agriculture, home economics, the trades and industries and the commercial branches. But no apportionment shall be made to any school until the courses for vocational training in such school and the instructors employed therein shall first have been approved by the state board of education. Moneys received from the federal government for the purpose of training teachers, supervisors, and directors of vocational courses together with all moneys appropriated from time to time by the legislative assembly of the state of Montana for a like purpose shall be apportioned by the state board of education to the several educational institutions of the state wherein vocational teachers, supervisors and directors are trained under the direction of the said state board. Funds for area vocational-technical education shall be apportioned to area vocational-technical schools meeting the requirements for eligibility for such funds.

History: En. Sec. 108, Ch. 148, L. 1931; amd. Sec. 1, Ch. 254, L. 1967.

Amendments

The 1967 amendment added the last sentence.

CHAPTER 43—DESIGNATION OF HIGH SCHOOLS AS VOCATIONAL TRAINING CENTERS

Section 75-4301. Designation of area vocational-technical schools.
75-4302. Branches of vocational education.
75-4303. Eligibility and procedure for admission.

75-4304. Tuition charges.
75-4305. Average number belonging—determination.
75-4306. State aid.
75-4307. Fees chargeable.
75-4308. Budgets of anticipated new area vocational schools.

75-4301. Designation of area vocational-technical schools. The state board for vocational education may, upon the application of the board of trustees of any district high school, county high school, high school district, junior college or community college, designate such educational institution as an area vocational-technical school. The board may also designate any unit of the Montana university system as an area vocational-technical school.

History: En. Sec. 1, Ch. 160, L. 1939; amd. Sec. 2, Ch. 254, L. 1967.

Amendments

The 1967 amendment substituted the passage beginning "junior college or community college" to the end of this section for "maintaining a vocational training department with facilities for additional enrollment in such department, designate such high school as a vocational training center" and made a minor change in phraseology.

75-4302. Branches of vocational education. Vocational education shall include those branches of training for which the federal government by any act of Congress is, or may be, authorized to compensate the states for promoting vocational education including, but not limited to, education in agriculture, home economics, the trades and industries, distributive occupations, aeronautics, and the commercial branches.

History: En. Sec. 2, Ch. 160, L. 1939; amd. Sec. 3, Ch. 254, L. 1967.

Amendments

The 1967 amendment inserted "including, but not limited to, education" after "vocational education" and made a minor change in punctuation.

75-4303. Eligibility and procedure for admission. The state board for vocational education shall prescribe rules governing the admission of students to area vocational-technical schools designated by the state board for vocational education. When facilities are inadequate to admit all applicants, priority for admission shall be given first to students under twenty-one (21) years of age residing in Montana, second to students twenty-one (21) years of age or older residing in Montana, and third to students from other states.

History: En. Sec. 3, Ch. 160, L. 1939; amd. Sec. 1, Ch. 77, L. 1963; amd. Sec. 4, Ch. 254, L. 1967.

Amendments

The 1963 amendment deleted the words "on a nontuition basis" which followed "admit for training" in the former first sentence.

The 1967 amendment rewrote this section. Prior to amendment, it read, "Vocational training centers designated by the state board for vocational education shall admit for training any resident of the state of Montana, between the ages of sixteen (16) and twenty-one (21) years, provided that any such resident of the state, residing out of the county wherein a vocational center is located, shall make application for admission to training on or before the first day of June of the school year preceding the opening of the next school year. Notice of the acceptance or rejection of such applicant shall be given by the local authority of the training center on or before the first of July, following receipt of the application. Notice of the acceptance of the applicant shall be presented to the county superintendent of schools and the board of county commissioners of the applicant's residence on or before the 15th day of July."

75-4304. Tuition charges. There may be a tuition charge for attendance at an area vocational-technical school. The rate of tuition may be fixed by the agency operating the school, subject to approval by the state board for vocational education.

(1) For a resident of Montana under twenty-one (21) years of age, the tuition may not exceed four hundred dollars ($400) per year.

(2) No tuition charge shall be made for a student under twenty-one (21) years of age who resides in the county in which he attends an area vocational-technical school.

(3) The tuition charge for a student under twenty-one (21) years of age who resides in another county in Montana shall be paid by the county of residence.

(a) Upon entering an area vocational-technical school, such student must notify the county superintendent of the county of his residence of the school to be attended, and must apply for approval of such attendance. The county superintendent, upon verifying the admission of the student to the school, shall approve his application.

(b) Tuition for any period of attendance between July 1 and June 30 is an obligation of the county of residence for the following year, in such amount as the state board for vocational education may approve.

(c) Before July 15 of the year following the year of attendance, the agency operating the school shall notify the county superintendent of the county where the school is located of the names and home addresses of all out-of-county students, with the approved amount of tuition due for each. The county superintendent shall transmit this information to the county superintendents of the counties where all such students reside.

(d) The procedure for budgeting and paying high school tuition set forth in section 75-4230, R. C. M. 1947, as amended, shall be used to budget and pay tuition for vocational students, provided, however, that the rates and attendance periods for high school attendance shall not apply to vocational students.

(4) For a student who is not a resident of Montana, the procedure for tuition payment shall be established by the state board for vocational education. In lieu of individual payment the state board may negotiate a tuition agreement with the appropriate educational agency of the state of the student's residence.

History: En. Sec. 4, Ch. 160, L. 1939; amd. Sec. 2, Ch. 77, L. 1963; amd. Sec. 5, Ch. 254, L. 1967.

Amendments

The 1963 amendment substituted "two hundred fifty dollars ($250) a year" at the end of the former first sentence for "fifty cents (50¢) per day for each and every day of attendance at the time of the June apportionment, provided that attendance for less than thirty-five days shall not be counted, and further provided that the total amount apportioned for each attendant for each school year shall not exceed the sum of $90.00."

The 1967 amendment rewrote this section. Prior to amendment it read, "When attendance of any eligible person between the ages of sixteen (16) and twenty-one (21) years at a designated vocational training center, outside of the county of his residence, is authorized, as provided in section 75-4303, the board of county commissioners of the county of such residence must forthwith direct the county treasurer to pay from the high school transfer fund to the board of trustees of the school district, high school district or county high school designated as a vocational training center at which attendance has been authorized the sum

of two hundred fifty dollars ($250) a year. The names of all applicants entitled to admission to the training center who are residents of the county wherein such center is located, shall be added to the list of those eligible to be counted for high school attendance."

Repealing Clause

Section 3 of Ch. 77, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 77, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 26, 1963.

75-4305. Average number belonging—determination. Only Montana residents under twenty-one (21) years of age attending area vocational-technical schools may be counted in the average number belonging (ANB).

History: En. Sec. 5, Ch. 160, L. 1939; amd. Sec. 6, Ch. 254, L. 1967.

Amendments

The 1967 amendment rewrote this section. Prior to amendment, it read, "Rules and regulations governing admission of applicants to vocational training centers shall be promulgated by the state board for vocational training, and shall be applied uniformly to all applicants."

75-4306. State aid. To assist with the cost of operating an area vocational-technical school, a board of trustees may apply to the state board for vocational education for state aid provided the board of trustees has made the maximum approved tuition charge payable by the county of the student's residence.

State aid may be paid from any state funds appropriated for reimbursement to schools for vocational education.

The state board for vocational education shall fix the amount of state aid per student, based on the period of attendance, hours of instruction and such other criteria as the board may establish.

History: En. Sec. 6, Ch. 160, L. 1939; amd. Sec. 7, Ch. 254, L. 1967.

Amendments

The 1967 amendment rewrote this section. Prior to amendment, it read, "Applicants who have passed their 21st birthday may be admitted to designated vocational training centers upon the payment of a tuition, the amount of such tuition shall be fixed by the state board for vocational education."

75-4307. Fees chargeable. Fees for the use of equipment and material used in training may be charged by the agency operating an area vocational-technical school.

History: En. Sec. 7, Ch. 160, L. 1939; amd. Sec. 8, Ch. 254, L. 1967.

Amendments

The 1967 amendment substituted "agency operating an area vocational-technical school" for "board of trustees of the vocational training center" at the end of the section.

Effective Date

Section 9 of Ch. 254, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

75-4308. Budgets of anticipated new area vocational schools. Whenever a new area vocational-technical school, to be in operation for the first time in the ensuing year, has been approved by the state board for vocational education prior to the adoption of the preliminary budget by the board of trustees of the high school district, county high school or community college operating the new school, the board of trustees may include in the average number belonging (ANB) for such budget a

number anticipated to be the ANB attributable to new vocational students under the age of twenty-one (21) years who have not been included in the current year's enrollment for budget purposes. The anticipated ANB is subject to the approval of the state board for vocational education.

History: En. Sec. 1, Ch. 211, L. 1967.

Title of Act

An act to provide for the use of anticipated average number belonging (ANB) in the budgets of new area vocational-technical schools; and providing an effective date.

Effective Date

Section 2 of Ch. 211, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 28, 1967.

CHAPTER 44—COMMUNITY COLLEGE DISTRICTS

Section 75-4413. Property and population requirements for district—corporate powers—exemption from school district law.
75-4414. Supervision by state board of education.
75-4415. Boundaries of district—additional to other districts.
75-4416. Petition for organization of district—election—order establishing district.
75-4417. Election of trustees—districts from which elected—terms of office.
75-4418. Notice of organization election—conduct of election.
75-4419. Trustees' oath of office—officers of board—quorum—vacancies—seal.
75-4420. Trustee elections after organization.
75-4421. Meetings of board—notice—mileage allowance for trustees.
75-4422. Trustees not to have pecuniary interest in district contracts—advertising for bids.
75-4423. Courses of instruction provided—tuition fees.
75-4424. Employment of personnel—retirement of employees and trustees.
75-4425. Participation in foundation program and equalization fund—budgeting—special tax levy.
75-4426. Building construction and repairs—acquisition of land—tax levy—federal and state aid.
75-4427. Acceptance of donations.
75-4428. Disposition of surplus property—contracts for co-operation with school districts.
75-4429. Junior colleges authorized to continue—conversion to community college.
75-4430. Annexation of school districts to junior college or community college district—election.

75-4401 to 75-4412. Repealed.

Repeal

These sections (Secs. 1 to 12, Ch. 158, L. 1939; Sec. 1, Ch. 173, L. 1953), relating to junior colleges, were repealed by Sec. 20, Ch. 274, Laws 1965.

75-4413. Property and population requirements for district—corporate powers—exemption from school district law. The voters in any area of the state may form a community college district where the area to be formed into such district has an assessed valuation of not less than thirty million dollars ($30,000,000) and has a total of not less than seven hundred (700) pupils regularly enrolled in public and private high schools. The district may consist of a county, two or more contiguous counties, or contiguous parts of two or more counties in this state. When such a district is organized, it shall be a body corporate and a subdivision of the state of Montana and shall be known as "The Community College District of _____, Montana" and, in that name, may sue and be sued,

levy and collect taxes within the limitations of this act, and possess the same corporate powers as common school and high school districts in this state, except as herein otherwise provided. Sections 75-1801 to 75-1834, Revised Codes of Montana, 1947, as amended, shall not apply to community college districts organized under the provisions of this act except as provided herein.

History: En. Sec. 1, Ch. 274, L. 1965.

Title of Act

An act providing for the creation and establishment of community college districts; directing state board of education to supervise community colleges and junior colleges; providing for elections to create community college districts; providing for governing board of community college districts and for the election, terms and qualifications of its trustees; providing for powers of board of trustees and powers of community college districts; providing authority for, and financing of, maintenance and operations and capital improvements of community college districts; providing for instruction to be offered by community and junior colleges; authorizing negotiations with school districts for property and providing for adult education courses and exchange of teachers; providing that present junior colleges may be established as community colleges and community college districts; and providing for annexation of additional areas to community college districts; repealing sections 75-4401, 75-4402, 75-4403, 75-4404, 75-4405, 75-4406, 75-4407, 75-4408, 75-4409, 75-4410, 75-4411, 75-4412, R. C. M. 1947.

75-4414. Supervision by state board of education. (1) Junior college departments or districts formed prior to the effective date of this act and those community college districts formed under the provisions of this act shall be under the supervision of the state board of education.

(2) It shall be the duty of the state board of education to:

(a) Establish the role of the two-year college in the state;

(b) Set up a survey form to be used for local surveys of need and potential for two-year colleges and provide supervision in the conducting of surveys;

(c) Supervise the community college districts formed under the provisions of this act and the junior colleges now in existence and formed prior to the effective date of this act;

(d) Formulate and put into effect, uniform policies as to budgeting, record keeping and student accounting;

(e) Establish uniform minimum entrance requirements and uniform curricular offerings for all community and junior colleges;

(f) Make a continuing study of the junior and community college education in the state; and

(g) Be responsible for the accreditation of each junior college and community college under its supervision. Accreditation shall be conducted annually or as often as deemed advisable and made in a manner consistent with the rules and regulations established and applied uniformly to all junior and community college districts in the state. Standards for accreditation of junior and community colleges shall be formulated with due consideration given to curriculum offerings and entrance requirements of the Montana university system.

History: En. Sec. 2, Ch. 274, L. 1965.

75-4415. Boundaries of district—additional to other districts. The boundaries of any community college district organized under this act

shall coincide with the then-existing boundaries of the contiguous common school districts proposed to be included, and such community college district shall be in addition to any other school districts existing in any portion of such area.

History: En. Sec. 3, Ch. 274, L. 1965.

75-4416. Petition for organization of district—election—order establishing district. Whenever there is presented to the state board of education a petition, signed by not less than twenty per centum (20%) of the qualified registered electors residing within each county or part of county within a proposed community college district area, praying that a community college district be organized for the purpose of offering community college (13th and 14th year) courses, the state board of education shall order an election held within the proposed district of the qualified electors therein to vote on the proposal and to elect trustees, at the next following annual school election. At such election, the proposition shall be in substantially the following form:

PROPOSITION

Shall there be organized within the area comprising the School Districts of _____, State of Montana, a community college district for the offering of 13th and 14th year courses, to be known as the Community College District of _____, Montana, under the provisions of Chapter (giving the number of this act [274]), Laws of 1965, as prayed in the petition filed with the State Board of Education at Helena, Montana, on the _____ day of _____, 19—?

☐ For organization
☐ Against organization

The election shall be conducted in the manner provided for the election of trustees in a common school district of the second or third class. Within fifteen (15) days after such election, the results shall be transmitted by those receiving the same under law in each component district to the state board of education, by certificates attesting to the total number of votes cast within each such district on said proposition, the votes cast for and against said proposition and the votes cast for each candidate for trustee, together with the tally sheets attested to by the judges and clerks of election at each polling place within each such district. The proposal to organize the community college district, to carry, must receive a majority of the total number of votes cast thereon and the state superintendent of public instruction, from the results so certified and attested, shall determine whether the proposal has received the majority of the votes cast thereon for each county or part of a county within the proposed district and shall certify the results to the state board of education. Should the state superintendent of public instruction certificate show that the proposition to organize such community college district has received a majority of the votes cast thereon in each county or part of a county within the proposed district, the state board of education shall make an order declaring the community college district organized and cause a copy thereof to be recorded in the office of county clerk and

recorder in each county in which a portion of such new district is situated. If the proposition carries in some county or counties and/or parts of counties but not in all portions of area sought to be included within the district, the board shall determine whether the area in which the proposition carried by a majority vote meets the requirements of section 1 [75-4413] of this act, and if so shall establish the boundaries. If the proposition carries, the board shall also determine which candidates have been elected trustees under section 5 [75-4417] of this act. Should the proposition to organize the district fail to receive a majority of the votes cast thereon above provided, no tabulation shall be made to determine the candidates elected trustees.

History: En. Sec. 4, Ch. 274, L. 1965.

75-4417. Election of trustees—districts from which elected—terms of office. In the organization election seven (7) trustees shall be elected at large, except, that should there be in such proposed community college district one or more high school districts or part of a high school district within the community college district with more than forty-three per cent (43 %) and not more than fifty per cent (50 %) of the total school census of the proposed district, as determined by the last school census, then each such district or part of district shall elect three (3) trustees and the remaining trustees shall be elected at large from the remainder of the proposed college district. Should any such high school district or such part of a high school district have more than fifty per cent (50%) of the total school census of the proposed district then four (4) trustees shall be elected at large from such high school district or such part of high school district and three (3) trustees at large from the remainder of the proposed college district. If the trustees are elected at large throughout the entire proposed district, the one receiving the greatest number of votes shall be elected for a term of seven (7) years, the one receiving the next greatest number of votes, for a term of six (6) years, the one receiving the next greatest number of votes, for a term of five (5) years, the one receiving the next greatest number of votes for a term of four (4) years, the one receiving the next greatest number of votes for a term of three (3) years, the one receiving the next greatest number of votes for a term of two (2) years and the elected one receiving the least number of votes for a term of one (1) year. If the trustees are elected in any manner other than at large throughout the entire proposed district, then the trustees elected shall determine by lot the one who shall serve for seven (7) years, the one who shall serve for six (6) years, the one who shall serve for five (5) years, the one who shall serve for four (4) years, the one who shall serve for three (3) years, the one who shall serve for two (2) years and the one who shall serve for one (1) year. Thereafter, all trustees elected shall serve for terms of seven (7) years each.

History: En. Sec. 5, Ch. 274, L. 1965.

75-4418. Notice of organization election—conduct of election. Notice of the organization election shall be given by the state board of education by publication in at least one (1) newspaper of general circulation in

each county including any portion of the proposed community college district, once a week for three (3) consecutive weeks, the last insertion to be no longer than one (1) week prior to the date of election. The election shall be conducted in the same manner, at the same polling places and by the same election officials who are conducting elections on that day in each component school district.

History: En. Sec. 6, Ch. 274, L. 1965.

75-4419. **Trustees' oath of office—officers of board—quorum—vacancies—seal.** Newly elected members of the board of trustees shall be qualified by taking the oath of office prescribed by article XIX, section 1, of the constitution of Montana. The board shall be organized by the election of a president and vice-president and a secretary, said secretary may be or may not be a member of the board. The treasurer of the community college district shall be the county treasurer of the county in which the community college is situated. A majority of the board shall constitute a quorum for the transaction of business, but no contract shall be let, teacher employed or dismissed, or bill approved unless a majority of the whole board shall vote therefor. Any vacancy occurring in the board shall be filled by appointment by the remaining members of the board, and the persons appointed shall hold office until the next election held by such community college district when a trustee shall be elected for the unexpired term. The board shall keep a common seal with which to attest its official acts.

History: En. Sec. 7, Ch. 274, L. 1965.

75-4420. **Trustee elections after organization.** After organization, the qualified voters of the community college district shall vote for trustees on the first Saturday in April, and such elections shall be held in the same manner and with elections being held in the component common school districts within the boundaries of such community college district. All costs incident to such community college trustee elections shall be borne by the community college district. Notice of all such elections shall be given by the board of trustees by publication in at least one (1) newspaper of general circulation within each county, at least once a week for two (2) consecutive weeks, the last insertion to be no longer than one (1) week prior to the date of election. Should trustees be elected other than at large throughout the entire district, then only those qualified voters within the district from which the trustee or trustees are to be elected shall cast their ballots for the trustee or trustees from that district. All candidates for the office of trustee shall file their declarations or [of] candidacy with the secretary of the board of trustees at least thirty (30) days prior to the date of election. If voting machines are not used in a common school district or districts which are within such community college district, then the board of trustees shall cause ballots to be printed and distributed for the polling places in such component districts at the expense of the community college district, but in all other respects said elections shall be held at the same time, in the same places and shall be conducted by the same officials for elections being held in such common

school districts. The community college district shall reimburse to the common school district one-half (½) of the costs of the common school district of the compensation actually paid by said common school district to the judges of such elections. The judges of election in each component school district, shall certify to the board of trustees of the community college district the total number of votes cast for each candidate and the votes cast on all questions submitted within fifteen (15) days after any election. Within forty-eight (48) hours thereafter, at least a majority of the then qualified members of the board of trustees of such community college district shall jointly tabulate the results so received, shall declare and certify the candidates receiving the greatest number of votes for terms of seven (7) years each and until their successor shall have been elected and qualified and shall declare and certify the results of the votes cast on any question presented at such election. "Qualified voters," under the provisions of this act, shall mean those voters qualified to vote in the school election of the component common school district.

History: En. Sec. 8, Ch. 274, L. 1965.

75-4421. Meetings of board—notice—mileage allowance for trustees. The board of trustees shall hold monthly meetings within the community college district on the third Tuesday of each month or such other day of the month the board might set and may hold special meetings at any time and place which it may direct. The president and secretary of the board may also call special meetings of said board at any time and place, if in their judgment necessity requires it. The secretary of the board shall notify the members of all regular and special meetings. The members of the board shall receive ten cents (10¢) per mile for the distance necessarily traveled in going to and returning from the place of the meeting and his place of residence each day that such trip is actually made.

History: En. Sec. 9, Ch. 274, L. 1965.

75-4422. Trustees not to have pecuniary interest in district contracts —advertising for bids. It shall be unlawful for any community college district trustee to have any pecuniary interest, either directly or indirectly, in the erection of any school building, or for furnishing or repairing the same, or be in any manner connected with the furnishing of supplies for the maintenance of the college, or to receive or to accept any compensation or reward for services rendered as trustee, except as herein provided. No board of trustees shall let any contract (except if the amount involved is less than two thousand dollars ($2,000)[)] for building, furnishing, repairing or other work or supplies for the benefit of the district, without first advertising in a newspaper published in each county wherein the area of the district lies for at least two (2) weeks, call for bids to perform such work or furnish such supplies. In all cases where advertising is required, the board shall award the contract to the lowest responsible bidder; provided, however, that the board of trustees shall have the right to reject any and all bids.

History: En. Sec. 10, Ch. 274, L. 1965.

75-4423. Courses of instruction provided—tuition fees. A community college district organized under this act shall provide instruction, classes,

school or schools for student residents within the community college district; and subject to the approval of the state board of education provide instruction, courses and classes for vocational training within the district in the trades and industries and commercial branches, and for adult education. The board of trustees of such district may in their discretion determine the per capita cost of such courses, file the same with the state board of education and upon approval thereof by the state board of education, shall require of all nondistrict residents who are accepted as pupils, a tuition fee in such sum as may be necessary for maintenance of such course or courses. A different tuition may be established as between nondistrict residents residing within the state of Montana and those residing outside the state of Montana. In addition thereto, such board of trustees may charge resident students such amounts as it deems necessary to maintain such courses, taking into consideration such other funds as may be available under law for the support of such courses.

History: En. Sec. 11, Ch. 274, L. 1965.

75-4424. Employment of personnel—retirement of employees and trustees. The board of trustees shall appoint the employees of the community college, define and assign their powers and duties and fix their compensation.

The board of trustees and teachers of a community college district shall be subject to and receive the benefits of chapter 27 of Title 75 of the Revised Codes of Montana, as amended, and hereafter amended.

History: En. Sec. 12, Ch. 274, L. 1965.

75-4425. Participation in foundation program and equalization fund—budgeting—special tax levy. A community college under this act shall be considered a free public school for budgeting and financial purposes under chapter 36, Title 75 of the Revised Codes of Montana, 1947, as amended, and as hereafter amended. The term "average number belonging" for community colleges shall mean those students enrolled and in attendance, in a community college for a period of not less than thirty (30) days, and carrying a course of study of not less than ten (10) class hours in courses, including vocational courses meeting standards prescribed by the state board of education, during each calendar week. A class hour shall mean not less than fifty (50) minutes of instruction or supervised laboratory training. Each student, enrolled for a period of more than thirty (30) days in any one (1) quarter or semester but less than two (2) complete semesters or three (3) complete quarters, shall entitle the college district to receive proportionate credit based upon the number of weeks the student is enrolled and in attendance bears to the total weeks in the two (2) complete semesters or three (3) quarters. Such calculations shall exclude weeks of regular vacation time.

The moneys coming into the state public school equalization fund shall be distributed and apportioned to provide an annual minimum operating revenue for the community college in accordance with the schedules provided for high schools under chapter 36, Title 75 of the Revised Codes of Montana, 1947, as amended and as hereafter amended.

The community college district shall be subject to the budgeting laws of a joint high school district or a joint common school district maintaining a high school, in so far as they are applicable, provided, however, the budget of a community college district shall be complete and separate.

Whenever the board of trustees of a community college district shall deem it necessary to raise money for college purposes in addition to its revenues from county and state apportionments, they may proceed in so far as applicable under sections 75-4609 and 75-4610 of the Revised Codes of Montana, 1947, as amended.

History: En. Sec. 13, Ch. 274, L. 1965.

75-4426. Building construction and repairs—acquisition of land—tax levy—federal and state aid. The board of trustees of any community college district is hereby vested with the power and authority to build, enlarge, alter, repair or acquire by purchase school buildings and dormitories; furnishing and equipping the same, and purchasing the necessary lands therefor and the board of trustees of any community college district is hereby authorized to levy an additional tax not exceeding ten (10) mills on the dollar of the taxable value of all taxable property within the district for these purposes; provided they shall first be authorized to do so by an election held of the qualified electors of the district who are taxpayers upon property within the community college district, called, noticed and conducted in so far as applicable by sections 75-4609 and 75-4610 of the Revised Codes of Montana, 1947, as amended. The board of trustees of any community college district is hereby authorized to accept funds from the United States or the state of Montana, their instrumentalities or any of their agencies in aid of any one or more of such purposes or in maintaining and operating the college.

History: En. Sec. 14, Ch. 274, L. 1965.

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

75-4427. Acceptance of donations. All community college districts and its boards of trustees thereof on behalf of such districts are hereby authorized and empowered to accept gifts, legacies and devises, subject to the conditions imposed by the deed of the dower, or will of testator, or without any conditions imposed.

History: En. Sec. 15, Ch. 274, L. 1965.

75-4428. Disposition of surplus property—contracts for co-operation with school districts. Whenever there is within any school district any school property that is not required for the use of the school district and such property could be used for purposes of offering education beyond grade twelve or vocational and adult education by community college district, the boards of trustees of any school district is hereby authorized to lease or sell and convey the same to such community college district by negotiation. Any school district within or without the community college district is authorized to contract with a community college district to

provide adult education courses for such school district and to exchange teachers.

History: En. Sec. 16, Ch. 274, L. 1965.

75-4429. Junior colleges authorized to continue—conversion to community college. All junior colleges established prior to the effective date of this act shall be under the supervision of the state board of education and shall conform to the scholastic standards established by the board, but no such district may be dissolved except as now provided by law and in no instance because it does not meet the standards for organization established by section 1 [75-4413] of this act. The governing board of any such institution may, by resolution and by transmitting a copy of such resolution to the state superintendent of public instruction, establish a community college district under this act, and name the same without compliance with sections 1 and 4 [75-4413 and 75-4416] of this act.

If such governing board establishes a community college district it shall act as the board of trustees of the community college district until the next general school election held on the first Saturday in April as provided in section 8 [75-4420] herein when all community college district trustees shall be elected as provided in section 5 [75-4417] except that it will not in any way be considered an organization election.

History: En. Sec. 17, Ch. 274, L. 1965.

75-4430. Annexation of school districts to junior college or community college district—election. Whenever the junior or community college district board of trustees shall so resolve or whenever ten per cent (10 %) of the qualified electors of the common school district or districts situate within one (1) county sought to be annexed indicate by a petition, filed with the secretary of the board of trustees of such junior college or community college district, requesting the annexation of a common school district or districts situate within one (1) county to the said district, the board of trustees shall call an election on such annexation within not less than twenty-five (25) days nor more than sixty (60) days from the passage of such resolution or the filing of said petition as the case may be. Notice of such election shall be given in the same manner as an election held to organize a community college district under this act. The election shall be conducted in the same manner, and those eligible to vote shall be the same as an election to organize junior college districts under this act. The board of trustees shall establish such polling places as it may deem fit within the area sought to be annexed.

The question on the ballot shall be as follows:

"Shall school districts _____ be annexed to and become a part of the community college district of _____, Montana?

☐ For Annexation

☐ Against Annexation"

The proposal to annex to carry, must receive a majority of the total votes cast thereon. The judges of the election shall within five (5) days after said election transmit the pollbooks, ballots and tally lists to the board of trustees of said community college district who shall canvass the vote

and declare the results of the election and shall cause, if the annexation question carried, a certified copy of their canvassing resolution to be filed in the office of the county clerk and recorder of the county containing area to be annexed and upon such filing the area to be annexed shall then become a part of the community college district.

History: En. Sec. 18, Ch. 274, L. 1965.

Separability Clause

Section 19 of Ch. 274, Laws 1965 read "If any section, sentence, clause or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act."

Repealing Clause

Section 20 of Ch. 274, Laws 1965 read "Sections 75-4401 through 75-4412, R. C. M. 1947, are repealed."

CHAPTER 45—HIGH SCHOOL BUDGET ACT

Section 75-4516.1. Levy of taxes.
75-4518.1. Reduction in budget by budget board—allowance of additional expenses over foundation program.
75-4521. High school budgets.
75-4524. Emergency warrants.
75-4525. Tax levy to pay emergency warrants.

75-4507 to 75-4510. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 133, L. 1945), constituting temporary and obsolete authority for special increases in high school budgets, were repealed by Sec. 16, Ch. 267, Laws 1963.

75-4516.1. Levy of taxes. (1) Basic high school levy. It shall be the duty of the county commissioners of each county in the state to levy an annual basic special tax for high schools of fourteen (14) mills on the dollar of the taxable value of all taxable property within the county, which levy shall be made at the time and in the manner provided by law for the levying of taxes for county purposes and which tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected; provided that if a basic levy of less than fourteen (14) mills should be sufficient to meet the total of the approved budgets of all school districts and county high schools within the county, then such lesser basic levy shall be made.

No county levying less than the adjusted basic high school levy shall receive any apportionment of state equalization aid.

(2) Additional high school levy. The county commissioners shall, if necessary, levy an additional tax in such number of mills on the taxable value of all taxable property within the county as shall be required to provide the foundation program for all school districts and county high schools within the county. The county superintendent shall apportion the proceeds of such additional tax levy to each school district and county high school within the county after apportionment of the basic special tax for high schools as provided in section 75-3618 and the state equalization aid as provided in section 75-3619.

(3) Permissive high school levy. If the revenues for the operation and maintenance of any high school, including the amount apportionable from said basic special tax for high schools and the amount, if any, produced by said additional high school tax, shall be less than the foun-

dation program of such high school and the approved additions thereto included in its budget, within the limitations hereinbefore specified, it shall be the further duty of the board of county commissioners to fix and levy a tax, in such number of mills as will produce the amount shown by the final budget to be raised by tax levy plus federal reimbursements in lieu of taxes, which tax shall, in the case of a county high school not located within a building district, be levied upon all property in the county, excepting the property of any district supporting a district high school, and shall, in the case of a county high school located within a high school building district, be levied upon all property in such building district and which tax shall, in the case of a district high school not located within a building district, be levied upon all property within the school district, and shall, in the case of a district high school located within a building district, be levied upon all property in such building district, provided, however, that such last mentioned additional tax shall not, in any event, be used to raise funds in excess of the maximum budgets as specified in section 75-4518.1 when considered with all other sources of revenues, unless approved by a vote of the taxpaying electors.

History: En. Sec. 15, Ch. 199, L. 1949; amd. Sec. 4, Ch. 208, L. 1951; amd. Sec. 1, Ch. 202, L. 1953; amd. Sec. 1, Ch. 246, L. 1961; amd. Sec. 14, Ch. 267, L. 1963; amd. Sec. 6, Ch. 198, L. 1965.

Amendments

The 1963 amendment completely rewrote this section. For previous text, see parent volume.

The 1965 amendment substituted the first paragraph of subsection (1) for paragraphs reading, "On or before the first day of August in each year, the state superintendent of public instruction shall compute and determine the sum of money which, when added to the moneys available for the state equalization aid shall provide seventy-five per cent (75%) of the maximum high school budgets for all high schools as set forth in sections 75-4518.1 and 75-3612, plus the amount of high school tuition. Such information shall be given to the state board of equalization who shall compute and determine the number of mills of a tax (herein called the basic high school tax) on the taxable value of all property within all the counties of the state which is calculated to produce the aforesaid sum of money. If a levy of less than the number of mills so determined is sufficient to provide the total foundation programs from the general fund budgets of all school districts within one or more counties, the state board of equalization shall recompute the basic high school tax to be levied in the remaining counties, excluding in the computations the amount of the foundation programs in the county or counties requiring a lesser levy, thus determining as the adjusted basic high school tax the number of mills required to produce the sum of money which, when added to all the moneys available for state equalization aid to be distributed to all high schools except those which as hereinafter provided are not entitled to apportionment of state equalization aid, shall equal the total of the foundation programs of all high schools except those not entitled to apportionment of state equalization aid. In no event shall the adjusted basic high school tax exceed fifteen (15) mills. In addition to the provisions for the support of the high schools hereinbefore provided, it shall be the duty of the board of county commissioners of each county in the state to levy on the taxable valuation of all taxable property in the county the number of mills determined by the board of equalization as the adjusted basic high school tax, except that the board in any county in which a levy of less than the number of mills so determined is sufficient to provide the total foundation programs from the general fund budgets for all high schools within the county shall levy such lesser number of mills. The levy in each county shall be made at the time and in the manner provided by law for the levying of taxes for county purposes, and the tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected"; and substituted "state equalization aid" for "state public school equalization funds" near the end of subsection (2).

75-4518.1. Reduction in budget by budget board—allowance of additional expenses over foundation program. If the total amount of the proposed general fund expenses in the preliminary budget of any district or county high school shall exceed the foundation program thereof, the budget board shall, in the manner provided by section 75-4518, reduce such proposed general fund expenses to a total equal to said foundation program unless the board of trustees of said district or county high school shall establish to the satisfaction of the budget board that special circumstances exist which justify such additional expenses, and in such event a statement of the reasons for the allowance of such additional expenses shall be attached to said budget and signed by the chairman of the budget board, but the allowance of such excess expense over the foundation program shall not in any manner increase the amounts of state equalization aid to be apportioned hereunder; and provided that, except in the case of the existence of the emergencies specified in section 75-4521, the entire amount of such additional expense over the foundation program to be included in any high school budget including any reserve fund, not to exceed thirty-five per cent (35%) of the amount appropriated in the final and approved budget for the then current school year, for the purpose of maintaining the elementary and high school of the district from July 1 to November 30 of the next succeeding year, plus the foundation program shall not be greater than the maximum amounts in accordance with the following schedules, provided that nothing herein contained shall be construed as preventing the voting of an additional levy in accordance with the general school laws pertaining to the voting of additional levies.

High Schools

(1) For each high school having an ANB of twenty-four (24) or fewer pupils, the maximum shall be thirty-one thousand eighty-five dollars ($31,085).

(2) For a secondary school having an ANB of more than twenty-four (24) pupils, the maximum twelve hundred ninety-five dollars ($1,295) shall be decreased at the rate of eight dollars and fifty-five cents ($8.55) for each additional pupil until the ANB shall have reached a total of forty (40) such pupils. For a school having an ANB of more than forty (40) pupils, the maximum of eleven hundred fifty-eight dollars ($1,158) shall be decreased at the rate of five dollars and seventy-nine cents ($5.79) for each additional pupil until the ANB shall have reached one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, a maximum of eight hundred ten dollars and sixty-five cents ($810.65) shall be decreased at the rate of one dollar and eighty-nine cents ($1.89) for each additional pupil until the ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, the maximum of six hundred twenty-one dollars and seventy cents ($621.70) shall be decreased by forty-three cents ($.43) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of five hundred seventy-nine dollars ($579) shall be decreased at the rate of eleven cents ($.11) until

the ANB shall have reached five hundred forty-six dollars ($546) per pupil.

The maximum per pupil for all pupils (ANB) and for all schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB.

In computing the amount for the foundation program and the maximum program only junior high schools which have been approved and accredited by the state board of education shall be considered a part of the secondary enrollment.

History: En. Sec. 14, Ch. 199, L. 1949; amd. Sec. 3, Ch. 208, L. 1951; amd. Sec. 15, Ch. 267, L. 1963; amd. Sec. 7, Ch. 198, L. 1965; amd. Sec. 4, Ch. 317, L. 1967.

Amendments

The 1963 amendment substituted "of state equalization aid to be apportioned hereunder" for "to be apportioned hereunder from the state public school equalization fund" immediately before the first proviso; inserted "plus the foundation program" after "July 1 to November 30 of the next succeeding year" near the end of the first paragraph; substituted "the maximum amounts in accordance with the following schedules" near the end of the first paragraph for "thirty per cent (30%) of the foundation program of any high school, having an ANB of 100 or less pupils, and shall not be greater than twenty-five per cent (25%) of the foundation program of any high school having an ANB of more than 100 pupils"; added the final proviso to the first paragraph; and added everything after the first paragraph.

The 1965 amendment increased the maximums specified in paragraph (1) from $25,500 to $27,030, in the first sentence of paragraph (2) from $1,062 to $1,126, in the second sentence of paragraph (2) from $950 to $1,007, in the third sentence of paragraph (2) from $665 to $704.90, in the fourth sentence of paragraph (2) from $510 to $540.60, in the fifth sentence of paragraph (2) from $475 to $503.50, and in the sixth sentence of paragraph (2) from $448 to $474.88; increased the rates of decrease specified in paragraph (2) from $7.00 to $7.42 in the first sentence, from $4.75 to $5.03 in the second sentence, from $1.55 to $1.64 in the third sentence, from 35c to 37c in the fourth sentence, and from 9c to 10c in the fifth sentence; and deleted a former concluding paragraph which read: "On or before January 1 of odd-numbered years, the state superintendent of public instruction shall transmit to the legislative assembly of the state of Montana a revised schedule for secondary schools in accordance with classifications by size as set forth in this section. This revised schedule will be based on the median general fund budgeted expenditures for the current year, by ascertaining the median of the general fund budgets for each classification of secondary schools, and the total number of pupils (ANB) for all schools in each classification, and by computing the revised schedule therefrom."

The 1967 amendment increased the maximums specified in paragraph (1) from $27,030 to $31,085, in the first sentence of paragraph (2) from $1,126 to $1,295, in the second sentence of paragraph (2) from $1,007 to $1,158, in the third sentence of paragraph (2) from $704.90 to $810.65, in the fourth sentence of paragraph (2) from $540.60 to $621.70, and in the fifth sentence of paragraph (2) from $503.50 to $579; increased the rates of decrease specified in paragraph (2) from $7.42 to $8.55 in the first sentence, from $5.03 to $5.79 in the second sentence, from $1.64 to $1.89 in the third sentence, from 37¢ to 43¢ in the fourth sentence, and from 10¢ to 11¢ in the fifth sentence; substituted "five hundred forty-six dollars ($546) per pupil" for "six hundred (600) pupils" at the end of the fifth sentence of paragraph (2); and deleted a sixth sentence of paragraph (2) which read: "Schools having an ANB in excess of six hundred (600) pupils shall receive four hundred seventy-four dollars and eighty-eight cents ($474.88) per pupil."

Repealing Clauses

Section 16 of Ch. 267, Laws 1963 read "Sections 75-4507, 75-4508, 75-4509, and 75-4510 are repealed."

Section 17 of Ch. 267, Laws 1963 and Sec. 8 of Ch. 198, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Section 5 of Ch. 317, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 18 of Ch. 267, Laws 1963 read "This act shall be in full force and effect

from and after the fifteenth day of March, 1963."

Section 9 of Ch. 198, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 6, 1965.

Section 6 of Ch. 317, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 3, 1967.

75-4521. (1263.16) **High school budgets.** (1) Whenever the board of trustees of a county high school or the board of trustees of a school district maintaining a district high school or schools, at any time after December 31st of any school year, shall deem that an emergency exists by reason of an increase in the enrollment and attendance over that of the immediately preceding school year over and beyond the extent which such increase might reasonably have been anticipated at the time of the adoption of the budget for the then current school year, and that because of such increase in enrollment and attendance the budget approved and adopted for any or all of the regularly budgeted funds of the high school for the then current school year does not provide sufficient funds to properly maintain and support such school or schools during the whole of the then current school year; or shall, at any time during a school year, deem that an emergency exists because of the destruction of any school property necessary to the maintenance of school, or its impairment by fire, flood, storm, riot, insurrection, or other act of God, to such an extent as to render it unfit or prevent its use for the school purposes for which theretofore used; or because of the entering by a court of competent jurisdiction of a judgment for damages against the district, or the enactment of legislation, after the adoption of the final budget, requiring expenditures not contemplated therein, such board of trustees by unanimous vote of all members of the board present at any meeting, the time and place of holding which all of the trustees shall have had reasonable notice, may adopt and enter upon their minutes a resolution, stating the facts constituting the emergency, the estimated amount of money required to meet such emergency, and the time and place when the board will meet for the purpose of considering and adopting an emergency budget for such current school year.

Whenever such board of trustees shall deem that an emergency exists for any reason other than those reasons specified above, such board may petition the state superintendent of public instruction for permission to adopt a resolution of emergency. Such petition shall set forth in writing the reasons for the request, the high school budget or budgets affected by the emergency, the estimated amount of money required to meet such emergency for each affected budget, the anticipated source or sources of financing for the emergency expenditures, and such other information as may be required by the superintendent of public instruction. Such petition shall be signed by all of the members of the board of trustees.

The state superintendent of public instruction shall have the power to approve or disapprove such petition. If such petition be approved, the board of trustees may proceed to adopt a resolution of emergency, and may subsequently take all other steps prescribed for meeting an emergency situation due to any of the causes specified above. Approval of such petition by the superintendent of public instruction shall merely authorize

the board of trustees to initiate emergency budget proceedings by resolution and shall not relieve such board of trustees of the necessity of complying with the requirements for proceeding according to the provisions of this section and all other laws pertaining to emergency budgets. Approval of such petition shall not be construed as approval of any subsequent application for increased state aid on account of such emergency.

(2) to (4). * * * [Same as parent volume.]

(5) The board of trustees may adopt an emergency budget for any or all of the budgeted funds of the high school, for which fund or funds a regular budget has been approved and adopted for the current year in accordance with the provisions of section 75-4517.

(6) Whenever the board of trustees shall prepare an emergency budget for the transportation fund, such emergency budget shall be so itemized as to show the amount appropriated therein, separately for bus transportation and for payments to parents or guardians in lieu of bus transportation. The board of trustees shall attach to such emergency transportation budget a copy of each transportation contract connected with the emergency, such contracts to be prepared and executed in accordance with the provisions of section 75-3405.

(7) Whenever the board of trustees shall prepare an emergency budget for the general fund or the transportation fund, or both, due to increased enrollment, such board of trustees may make application to the state superintendent of public instruction for increased payment from the state public school equalization fund for the foundation program, or for state transportation reimbursement, or both. The state superintendent of public instruction shall prepare and publish rules and regulations for such application. The state superintendent of public instruction shall consider all applications for increased state aid made in accordance with the provisions of this act, and shall determine the amount of increase, if any, which shall be made in the payment of funds from the state public school equalization fund for the foundation program, or for state transportation reimbursement, or both, on account of any emergency budget due to increased enrollment. The superintendent of public instruction shall notify the board of trustees of the approval or disapproval of any application for increase in payment of state funds, and in the event of approval the budget or budgets to which such increased payment shall be applied, and the amount or amounts thereof. The board of trustees shall attach a copy of such notice of approval or disapproval to the preliminary emergency budget.

(8) Three copies of the emergency budget shall be furnished the county superintendent of schools and such county superintendent must lay one copy thereof before the board of county commissioners, which constitutes the board of school budget supervisors for the county, at the next regular meeting of such board. Such board shall have the power to make such changes in such budget, if any, as it may deem proper and necessary, and shall then approve such budget, either as adopted by the board of school trustees, or as changed by the board of county commissioners.

History: En. Sec. 16, Ch. 178, L. 1933; amd. Sec. 1, Ch. 192, L. 1943; amd. Sec. 1, Ch. 135, L. 1945; amd. Sec. 4, Ch. 147, L. 1965.

Amendment

The 1965 amendment inserted "for any or all of the regularly budgeted funds of the high school" after "the budget approved and adopted" in the first clause of the first paragraph of subsection (1); added the second and third paragraphs to subsection (1); inserted new subsections (5), (6), and (7); redesignated former subsection (5) as subsection (8); and substituted "changed" for "changes" near the end of said subsection (8).

75-4524. Emergency warrants. After the approval of such emergency budgets, if the budget is to provide additional funds for the maintenance and support of the high school or schools, whenever the amount appropriated for any such item in the annual high school budget for such current school year has been fully used and such appropriation is exhausted, expenditures made thereafter shall be made by emergency warrants against the amount appropriated in the emergency budget, which emergency warrants shall be issued in the same manner and form and subject to the same conditions and provisions as set out in section 75-4531, except that on each thereof shall be distinctly endorsed "COUNTY HIGH SCHOOL EMERGENCY WARRANT" or "HIGH SCHOOL WARRANT SCHOOL DISTRICT NO. _____." After deducting from the amount of money standing to the credit of the fund of the high school for which the emergency budget was adopted the amount required to meet and take care of all unexpended appropriations in the annual budget for that fund for the current school year and after deducting the amount required for reserve, if any, provided in such budget for the following school year, if any balance remains in that fund the same shall be used to pay such emergency warrants issued against that fund, in the order in which the same are presented for payment.

History: En. Sec. 4, Ch. 135, L. 1945; amd. Sec. 5, Ch. 147, L. 1965.

Amendment

The 1965 amendment substituted "the fund of the high school for which the emergency budget was adopted" for "the general fund of the county high school or the general fund of the district high school as the case may be" near the beginning of the final sentence; inserted "for that fund" after "all unexpended appropriations in the annual budget" in the final sentence; substituted "after deducting the amount required for reserve, if any" in the final sentence for "reserve"; inserted "in that fund" after "if any balance remains" in the final sentence; and inserted "issued against that fund" after "used to pay such emergency warrants" in the final sentence.

75-4525. Tax levy to pay emergency warrants. The county treasurer shall, not later than the first Monday in August of the following school year, make out a statement for such county high school or school district showing the total amount of such emergency warrants issued then outstanding against any fund or funds, and the amount of money, if any, on hand in the said fund or funds of the high school applicable to the payment thereof, and the amount or amounts for the payment of which a special tax levy or tax levies should be made, and deliver the same to the board of county commissioners. For each fund of the emergency budget for which an emergency levy is required as determined herein, the board of county commissioners shall, on the second Monday in August, make and fix a levy against the taxable property designated for the sup-

port of the high school which will raise sufficient funds to pay such outstanding emergency warrants, with interest thereon, and the county treasurer shall, when collected, place the proceeds of each levy in a special fund and use the same to pay such outstanding emergency warrants with interest thereon as may be obligations against such fund. If after all such emergency warrants have been paid any amount remains in any such special fund it shall be, by such county treasurer, transferred to the comparable regular fund of the county high school or district high school.

History: En. Sec. 5, Ch. 135, L. 1945; amd. Sec. 6, Ch. 147, L. 1965.

Amendment

The 1965 amendment substituted "against any fund or funds" for "and unpaid" after "emergency warrants then outstanding" in the first sentence; inserted "in the said fund or funds of the high school" before "applicable to the payment thereof" in the first sentence; inserted "or amounts" after "amount" and "or tax levies" after "special tax levy" in the latter part of the first sentence; substituted "For each fund of the emergency budget for which an emergency levy is required as determined herein, the board of county commissioners shall" at the beginning of the second sentence for "Such board shall"; substituted "designated for the support of the high school" for "of the county in the case of a county high school, or against the taxable property in the school district if a district high school" after "taxable property" in the second sentence; substituted "the proceeds of each levy" for "the same" in the latter part of the second sentence; inserted "any" before "such special fund" in the first part of the third sentence; and substituted "the comparable regular fund of the county high school or district high school" at the end of the section for "the general fund of the county high school or to the high school fund of the district high school."

Repealing Clause

Section 7 of Ch. 147, Laws 1965 repealed all acts and parts of acts in conflict therewith.

CHAPTER 46—HIGH SCHOOL DISTRICTS—PUBLIC WORKS

Section 75-4601. High school trustees may undertake public works program—additional trustees—division of taxable valuation—commencement of proceedings—temporary relocation of schoolhouse.
75-4607. Alteration of boundaries—redivision—limitation.
75-4612. Joint districts authorized—procedure for establishment.
75-4613. General laws governing joint districts.
75-4614. Bonded indebtedness of territory incorporated into joint district.

75-4601. High school trustees may undertake public works program—additional trustees—division of taxable valuation—commencement of proceedings—temporary relocation of schoolhouse. In any county having a high school the board of trustees of the county high school, if there be one, and the boards of trustees of any school districts maintaining district high schools, are hereby designated as the boards of trustees of the respective high school districts established under this act, provided that additional members may be elected to the board of trustees of districts maintaining district high schools in the number and manner as follows: When a majority of the boards of the common school districts in the high school district so request, such requests shall be directed to the county superintendent of schools, who shall proceed as directed in this act.

The taxable valuation of the district in which the high school is located shall be divided by the number of trustees on the high school board. In the case of a first class district this number shall be seven (7), for a second class district five (5), and for a third class district three (3).

This figure obtained shall then be divided into the remaining valuation of the high school district, and the resulting number, to the closest whole number, shall be the number of additional board members to be elected; provided, that the number of these additional board members shall not exceed four (4) in districts of the first and second class. The additional board members in school districts of the third class shall not exceed two (2) except when two-thirds (⅔) or more of the high school enrollment in the high school district resides in the common school districts not maintaining the high school and such common school districts also contain at least two-thirds (⅔) of the taxable valuation of the high school district when three (3) additional trustees shall be elected from the common school districts not maintaining the high school and one (1) additional trustee shall be elected at large in the high school district.

(a) Following the determination of the number of additional board members to be elected, excluding the trustee at large, the county superintendent of schools shall district the territory of the high school district, excluding the common school district wherein the high school is located, into a number of trustee nominating districts equal to the number of additional board members to be elected, and each trustee nominating district so established shall be entitled to one (1) member on the board of trustees of the high school.

The additional trustee to be elected at large shall be placed in a trustee nominating district encompassing the entire high school district including the common school district wherein the high school district is located. Such trustee at large nominating district shall not preclude the creation of other additional trustee nominating districts as herein provided.

The election of the additional trustees shall be held on the first Saturday in April of every year to fill the expired terms of such additional trustees, and the term of office of such additional trustees after the first election of such trustees shall be for three (3) years. The term of office of the trustee at large shall be three (3) years.

The additional trustees so elected shall be residents of the respective trustee nominating districts established by the county superintendent of schools, and shall meet the general qualifications for school district trustees provided by section 75-1601, Revised Codes of Montana, 1947.

At the first election the additional trustees elected from the trustee nominating districts established by the county superintendent of schools, if there be more than one (1), shall cast lots to determine the length of time each shall hold office. If there is one (1) additional trustee, he shall hold office for three (3) years. If there are two (2) additional trustees, one (1) shall hold office for three (3) years and one (1) for two (2) years. If there are three (3) additional trustees, one (1) shall hold office for three (3) years, one (1) for two (2) years and one (1) for one (1) year. If there are four (4) additional trustees, two (2) shall hold office for three (3) years, one (1) for two (2) years and one (1) for one (1) year.

The procedure for calling and holding elections, and for the assumption of office, for the school district wherein the high school is located shall govern the election of the additional trustees herein provided for.

At least twenty (20) days preceding the election, any ten (10)

electors of a trustee nominating district established as provided for in this act, who are qualified to vote in the election for such additional trustee, shall file with the district clerk of the school district wherein the high school is located the nomination of any qualified person to be a candidate for such trustee from such nominating district. Ballots for the election of such additional trustees shall be prepared in the same form and manner as ballots are prepared for other trustees, providing that such ballots for additional trustees shall show clearly the trustee nominating district from which each nominee is a candidate.

Any qualified elector of a nominating district, excluding the district where the high school is located, may vote for the additional trustees so nominated, at the time and place of the annual election of school trustees in the common school district in which he is entitled to vote, provided that each elector may vote only for such additional trustee from the trustee nominating district in which he is a qualified elector.

A vacancy in the office of additional trustee shall be filled by appointment by the county superintendent of schools; provided, that such appointment shall be subject to confirmation by a majority of the remaining members of the high school district board including the additional members. The trustee so appointed shall hold office until the next annual election, at which election there shall be elected a trustee from the same nominating district for the unexpired term.

(b). * * * [Same as parent volume.]

(c) When the board of trustees of a high school district, who have qualified for their positions as such board of trustees under the provisions herein provided, shall find it necessary to temporarily move the site of the schoolhouse to another common school district within the high school district due to the destruction of the school building by fire, flood, storm, riot, insurrection or other act of God, such board of trustees shall continue to hold office for one (1) year after such schoolhouse relocation unless the schoolhouse is moved back to the common school district where it was originally located.

History: En. Sec. 1, Ch. 275, L. 1947; amd. Sec. 1, Ch. 188, L. 1951; amd. Sec. 1, Ch. 67, L. 1957; amd. Sec. 1, Ch. 167, L. 1959; amd. Sec. 1, Ch. 222, L. 1963; amd. Sec. 1, Ch. 166, L. 1965; amd. Sec. 1, Ch. 214, L. 1965; amd. Sec. 1, Ch. 311, L. 1967.

Compiler's Note

This section was amended twice in 1965, once by Ch. 166 and once by Ch. 214. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating the changes made by both amendatory acts.

Amendments

The 1963 amendment made a minor change in punctuation in the first paragraph; and completely rewrote subdivision (a), for previous text of which see parent volume.

Chapter 166, Laws of 1965, added subdivision (c).

Chapter 214, Laws of 1965, substituted "a" for "any" before "trustee nominating district" near the beginning of the sixth paragraph of subdivision (a) and again before "nominating district" near the beginning of the seventh paragraph of subdivision (a); and substituted "only for such additional trustee from the trustee nominating district in which he is a qualified elector" for "for no more than one such additional trustee from each trustee nominating district" at the end of the seventh paragraph of subdivision (a).

The 1967 amendment substituted the last sentence in the second paragraph for "or two (2) in districts of the third class"; inserted "excluding the trustee at large" after "to be elected" in the first paragraph of subdivision (a) of the second paragraph; added the second paragraph of

subdivision (a); and added the last sentence of the third paragraph.

Repealing Clause

Section 2 of Ch. 222, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 166, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 4, 1965.

75-4607. Alteration of boundaries — redivision — limitation. In any county which has been divided into high school building districts, at the request of any high school board of trustees, the commission, provided for in section 75-4602, may, in accord with the procedure provided in said section, alter the boundaries of said districts or redivide the county into a different number of high school districts, provided that such alteration or redivision may not be done within one (1) year from the original division or the last alteration of boundaries and last redivision.

History: En. Sec. 1, Ch. 130, L. 1949; amd. Sec. 1, Ch. 120, L. 1953; amd. Sec. 1, Ch. 140, L. 1965.

Amendment

The 1965 amendment reduced the period set forth in the proviso at the end of the section from three years to one year.

Effective Date

Section 2 of Ch. 140, Laws 1965 read "This act is effective April 1, 1965."

75-4612. Joint districts authorized—procedure for establishment. In addition to the provisions for the formation of high school districts authorized by section 75-4602, R. C. M. 1947, a high school joint district may be formed in accordance with the provisions of this act.

(a) Definitions. For the purposes of this act:

(1) An elementary joint district is a school district consisting of territory lying partly in one county and partly in another;

(2) A high school district is territory lying wholly within one county, created in accordance with the provisions of section 75-4602, R. C. M. 1947;

(3) A high school joint district is territory lying partly in one county and partly in another, designated a high school joint district in accordance with the provisions of this act;

(4) County L is a county in which the school operated by an elementary joint district is located;

(5) County NL is a county in which the school operated by an elementary joint district is not located.

(b) Procedure for formation of high school joint district:

(1) The action to form a high school joint district may be initiated by a majority of the resident taxpayers who are registered electors and whose names appear upon the last completed assessment roll for state, county and school district taxes, residing in an elementary joint district in the whole of the territory of such joint district lying in County NL. Such majority shall present a petition, in writing, to the county superintendent of schools of County NL, asking that the whole of the territory of the elementary joint district in which they reside in County NL be joined to that high school district in County L which includes the territory of the same elementary joint district lying in County L, to form a high school joint district.

(2) The petition shall describe the territory in County NL proposed to be joined to the high school district in County L, and shall also state the reason for desiring such change, and the number of children of high school age, if any, residing in such territory.

(3) The county superintendent of schools of County NL shall file said petition in his office immediately on receipt thereof, and shall give notice to the parties interested by posting notices at least ten (10) days prior to the time appointed for considering said petition, one (1) of which shall be in a public place in the territory in County NL proposed to be joined to the high school district in County L, and one (1) on the door of each high school in County NL which would be affected by the proposed change by reason of reduction of the territory designated for the support of such high school. At the time stated in said notice for the consideration of such petition, which shall not be less than ten (10) days nor more than thirty (30) days after the date of filing such petition, the county superintendent shall proceed to hear such petition.

(4) The county superintendent shall either grant or deny such petition based on evidence received. If such petition is granted, the county superintendent shall make an order fixing the boundaries of the high school joint district so formed. Subject to the provisions of paragraph (5) of this section, such order shall be final, unless an appeal be taken to the board of county commissioners of County NL within thirty (30) days thereafter, and upon hearing thereof the decision of said board shall be final, provided however that the right of appeal to the district court is reserved. No petition shall be granted when an operating high school exists in County NL within three (3) miles of any point of the territory described in the petition. No petition shall be denied solely because the territory described in the petition lies within the boundaries of a high school district in County NL, provided, however that if the removal of such territory from such high school district would reduce the taxable valuation of such high school district to less than seven hundred fifty thousand dollars ($750,000) the petition shall be denied.

(5) Copies of the order fixing the boundaries of the high school joint district shall be transmitted by the county superintendent of County NL to the county superintendent of County L and to the board of trustees of the affected high school district in County L, who within thirty (30) days from the receipt thereof shall act to approve or disapprove such order. Before the order will become effective, approval must be given by such county superintendent and by such board of trustees.

History: En. Sec. 1, Ch. 211, L. 1965.

Title of Act

An act providing for formation and control of high school joint districts in adjacent counties, and providing procedures for creation thereof.

75-4613. General laws governing joint districts. High school joint districts created hereunder shall be governed by the general school laws of the state.

History: En. Sec. 2, Ch. 211, L. 1965.

75-4614. Bonded indebtedness of territory incorporated into joint district. Bonded indebtedness of any territory affected by the provisions of

this act shall remain the indebtedness and obligation of the original territory against which such bonds were issued and shall be paid for out of levies made against said original territory.

History: En. Sec. 3, Ch. 211, L. 1965. Effective Date

Section 4 of Ch. 211, Laws 1965 read "This act is effective April 1, 1965."

CHAPTER 48—SCHOOL LUNCH AND CHILD NUTRITION PROGRAM

Section 75-4802. Expenditure of federal funds.
75-4803. Administration of program.
75-4805. Authority of school board.
75-4806. Accounts, records, reports and operations.

75-4802. Expenditure of federal funds. The superintendent of public instruction is hereby authorized to accept and direct the disbursement of funds appropriated by act of Congress and apportioned to the state for use in connection with school lunch programs, under the "National School Lunch Act," approved June 4, 1946 (Public Law 396, 79th Congress, Chapter 281, 2nd Session), and any amendments thereto. The superintendent of public instruction may also accept and disburse funds provided by any other acts of Congress providing for the feeding of children through the facilities of educational agencies, including the Child Nutrition Act of 1966 (Public Law 642, 89th Congress). The superintendent of public instruction shall deposit all such funds received from the federal government in a special account with the treasurer of the state who shall deposit them in the federal and private grant clearance fund and make disbursements therefrom upon the direction of the superintendent of public instruction.

History: En. Sec. 2, Ch. 282, L. 1947; amd. Sec. 65, Ch. 147, L. 1963; amd. Sec. 1, Ch. 123, L. 1967.

Amendments

The 1963 amendment deleted "in a special account" after "from the federal government"; and inserted "deposit them in the federal and private grant clearance fund and" after "of the state who shall" in the second sentence (now the third sentence).

The 1967 amendment added the present second sentence of this section, and inserted "in a special account" after "federal government" in the present third sentence.

75-4803. Administration of program. The superintendent of public instruction may enter into such agreements with any agency of the federal government, with any school board, or with any other agency or person, prescribe such regulations, employ such personnel, and take such other action, as he may deem necessary to provide for the establishment, maintenance, operation, and expansion of any school lunch program, and to direct the disbursement of federal and state funds in accordance with any applicable provisions of federal or state law. The superintendent of public instruction may give technical advice and assistance to any school board in connection with the establishment and operation of any school lunch program and may assist in training personnel engaged in the operation of such program. The superintendent of public instruction and any school board may accept any gift for use in connection with any school lunch program. Any or all of the foregoing powers also may be exercised

in connection with any child nutrition program which may be carried on by educational agencies.

History: En. Sec. 3, Ch. 282, L. 1947; amd. Sec. 2, Ch. 123, L. 1967.

Amendments

The 1967 amendment added the last sentence.

75-4805. Authority of school board. Any school board of any school is authorized to enter into contracts with the superintendent of public instruction for the purpose of obtaining funds, supplies and equipment, and facilities necessary to the establishment, operation and maintenance of a school lunch or child nutrition program in such school, and to operate or provide for the operation of school lunch or child nutrition programs in schools under their jurisdiction by using therefor funds disbursed to them under the provisions of this act, gifts and other funds received from sale of food under such programs, all in accordance with regulations prescribed by the superintendent of public instruction.

History: En. Sec. 5, Ch. 282, L. 1947; amd. Sec. 3, Ch. 123, L. 1967.

Amendments

The 1967 amendment inserted "or child nutrition" after "lunch" throughout this section, and substituted "food" for "lunches" before "under such programs."

75-4806. Accounts, records, reports and operations. The superintendent of public instruction shall prescribe regulations for the keeping of accounts and records and the making of reports by or under the supervision of school boards. Such accounts and records shall at all times be available for inspection and audit by authorized officials and shall be preserved for such period of time, not in excess of five (5) years, as the superintendent of public instruction may lawfully prescribe. The superintendent of public instruction shall conduct or cause to be conducted such audits, inspections, and administrative reviews of accounts, records, and operations with respect to school lunch and child nutrition programs as may be necessary to determine whether its agreements with school boards and regulations made pursuant to this act are being complied with, and to insure that school lunch and child nutrition programs are effectively administered.

History: En. Sec. 6, Ch. 282, L. 1947; amd. Sec. 4, Ch. 123, L. 1967.

Amendments

The 1967 amendment inserted "and child nutrition" after "lunch" throughout this section.

Repealing Clause

Section 5 of Ch. 123, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 6 of Ch. 123, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 23, 1967.

CHAPTER 50—EDUCATION CLASSES FOR MENTALLY RETARDED AND PHYSICALLY HANDICAPPED CHILDREN

Section 75-5001. Special education—mentally retarded children—physically handicapped children.
75-5003. Local boards of trustees—powers—determination of children requiring special education and the type of education responsibility of state superintendent—reimbursement by state—computation.
75-5005. Petition of parents for establishment of special teaching program.

75-5001. Special education—mentally retarded children—physically handicapped children. (1) Within the meaning of this act special education is that type of education requiring special facilities or instruction because of physical or mental deviation from the average on the part of some children. These handicapped are defined as follows:

(a) Mentally retarded children are children who are not capable of profiting from the general educational program of the public schools. These children may be considered in three (3) groups as follows: (i) Educable mentally retarded. Those children who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected from an eleven-year-old, but not less than that of a seven-year-old. (ii) Trainable mentally retarded. Those children who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected of a seven-year-old and who, for entrance into a training program, are capable of walking, of clean bodily habits, and of obedience to simple commands. (iii) Custodial mentally retarded. Those children who do not show a likelihood of attaining clean bodily habits, responsiveness to directions, or means of intelligible communication. The public schools are to assume responsibility for the educable group, and may assume responsibility for the trainable group.

(b) Physically handicapped children are those children who are capable of profiting from the general education program of the public schools, but who need special equipment, special services, and transportation to compensate for such physical handicaps as cardiac, cerebral palsy, or other physical handicaps including inadequate speech, hearing and vision, which makes them unable to profit from the normal education processes without some special provision. Nothing herein shall be construed to interfere with the purpose and function of the school for the deaf and blind in Great Falls.

(2) The board of trustees responsible for the operation of any public school may establish special education programs for educable mentally retarded children and physically handicapped children under the age of six (6) years when the superintendent of public instruction has determined that such programs will

(a) enable a child to achieve levels of competence that will enable him to profit from the general educational program of the public schools when he could not so profit without a special education program,

(b) permit the conservation or early acquisition of skills which will tend to provide the child with an equal opportunity to take his place with normal children in the general educational program of the public schools, or

(c) provide other demonstrated educational advantages which will materially benefit the child.

All special education programs established for mentally retarded or physically handicapped children under the age of six (6) years approved by the state superintendent of public instruction shall be eligible for reimbursements on the part of the state as provided in section 75-5003,

R. C. M. 1947, and for transportation aid as provided in section 75-3409, R. C. M. 1947.

History: En. Sec. 1, Ch. 206, L. 1955; amd. Sec. 1, Ch. 243, L. 1963; amd. Sec. 1, Ch. 164, L. 1967.

Amendments

The 1963 amendment substituted "mentally retarded" for "mentally handicapped" throughout former paragraph (1); deleted "handicapped" after "educable" in the final sentence of former paragraph (1); and added the words "and may assume responsibility for the trainable group" at the end of former paragraph (1).

The 1967 amendment inserted "(1)" before "Within the meaning" at the beginning of this section; relettered prior subdivision (1) as (a) and subdivision (2) as (b); and in new subdivision (a), renumbered subparagraphs (a), (b) and (c) as (i), (ii) and (iii); in new subdivision (b), inserted "speech" after "inadequate"; and added new subsection (2) as well as the last paragraph.

75-5003. Local boards of trustees—powers—determination of children requiring special education and the type of education responsibility of state superintendent—reimbursement by state—computation. (1) The board of trustees responsible for the operation of any school district may establish special education classes when it appears there are not less than four (4) educable mentally retarded or not less than four (4) physically handicapped children in the district.

(2) The board of trustees, responsible for the operation of any public school when it appears that there are not less than ten (10) educable mentally retarded or not less than ten (10) physically handicapped children in the district must maintain at least one special class for educable mentally retarded children or at least one special class for physically handicapped children, (and may provide classes for the trainable mentally retarded children).

(3) In lieu of providing such special classes the board of trustees may arrange to use the services of such approved mentally retarded or physically handicapped children's classes as may exist and may provide transportation services from home to school and return for all handicapped children enrolled in a state-approved special education program of such ages as it deems wise; provided, that the local board has the right to exclude persons of severe delinquent behavior. The determination of the children requiring special education and the type of special education needed by these handicapped children shall not be the responsibility of local boards of trustees but shall be the responsibility of the state superintendent of public instruction in co-operation with appropriate medical, psychiatric and psychological advice. Two (2) or more districts may combine to provide such educational facilities.

(4) Reimbursements on the part of the state for in-school classes of seven (7) or more students approved by the state superintendent of public instruction shall be computed on the basis of forty-five (45) in average number belonging. For a class of less than seven (7) students the ANB shall be computed on the basis of the number of students at a rate not to exceed six (6) ANB per student, provided that no class of less than four (4) students shall be approved. For other special education programs approved by the state superintendent of public instruction, including speech and hearing therapy, home or hospital tutoring, school-to-home telephone communication, or other individual programs, the

ANB shall be computed according to a schedule prepared by the state superintendent of public instruction on the basis of the time required and the degree of special education provided; in such cases the ANB shall not exceed six (6) for each exceptional child enrolled in such program. Transportation reimbursements shall be made on a schedule arrived at by the state superintendent of public instruction, and such expenditures shall be added to the transportation budget of the district. The state shall reimburse two-thirds (⅔) of such approved transportation and the county shall reimburse the remainder of such approved transportation according to said schedule.

(5) Whenever a new special education class or program, to be offered for the first time in the ensuing year, has been approved by the state superintendent of public instruction prior to the adoption of the preliminary budget, the board of trustees may include in the ANB for the budget a number anticipated to be the ANB eligible for special education computation in the ensuing year, subject to the approval of the state superintendent of public instruction.

(6) Any child who is mentally retarded, or physically handicapped, or both, who is enrolled in a state-approved special education program which is maintained by an elementary school district other than the district in which such child resides, shall be included in the computation of average number belonging to the district maintaining the special education program, according to the provisions herein. The district in which such child resides shall pay to the district where such child attends an amount of tuition based on two (2) times the tuition rates established in section 75-1630, and such payment shall be made in the manner prescribed by section 75-1630.

(7) Any such child who is enrolled in a state-approved high school special education program which is maintained by a high school located in a county other than the county in which such child resides, shall be included in the computation of the average number belonging to the high school maintaining the special education program, according to the provisions herein. The county in which such child resides shall pay to the high school where such child attends an amount of tuition based on two (2) times the tuition rates established in section 75-4230, and such payment shall be made in the manner prescribed by section 75-4230.

(8) When children are sent to an institution supported solely by funds of the state of Montana the home district or county will not be required to pay tuition for such child.

History: En. Sec. 3, Ch. 206, L. 1955; amd. Sec. 1, Ch. 108, L. 1959; amd. Sec. 1, Ch. 41, L. 1961; amd. Sec. 2, Ch. 243, L. 1963; amd. Sec. 1, Ch. 96, L. 1965; amd. Sec. 1, Ch. 142, L. 1965; amd. Sec. 1, Ch. 163, L. 1967.

Compiler's Note

This section was amended twice in 1965, once by Ch. 96 and once by Ch. 142. Since the two amendments do not appear in conflict, the compiler has made a composite section incorporating the changes made by both amendatory acts.

Amendments

The 1963 amendment inserted "(and may provide classes for the trainable mentally retarded children,)" in the first sentence of the first paragraph.

Chapter 96, Laws of 1965, substituted "The board of trustees, responsible for the operation of any public school" at the beginning of the section for "The board

of trustees in each school district"; inserted "not less than (10)" before "physically handicapped children" in the first sentence of the former first paragraph; substituted "at least one special class" for "special classes" before "for educable mentally retarded children" in the first sentence of the former first paragraph; inserted "at least one special class" before "for physically handicapped children" near the end of the first sentence of the former first paragraph; divided the former first sentence of the first paragraph into two sentences; inserted "In lieu of providing such special classes the board of trustees" at the beginning of the second sentence of the former first paragraph; deleted "within the state" after "as may exist" in the second sentence of the former first paragraph; substituted "and" for "or" before "may provide transportation services" in the second sentence of the former first paragraph; deleted "low intelligence or" before "severe delinquent behavior" in the proviso to the second sentence of the former first paragraph; deleted "listed above" at the end of the third sentence of the former first paragraph; substituted the first two sentences of the second paragraph for "Reimbursements on the part of the state for such programs shall be computed on the basis of counting each such mentally retarded child in such special classes as three (3) in average number belonging, and each physically handicapped child according to a schedule to be prepared by the state superintendent of public instruction, but in no case shall it be over three (3) average number belonging for each such child, prorated according to time and number in these special classes, or in home tutoring"; and inserted the former third paragraph.

Chapter 142, Laws of 1965, inserted "two times" before "the tuition rate" in the last sentence of the former fourth paragraph and in the last sentence of the former fifth paragraph.

The 1967 amendment added subsection (1); numbered the paragraphs in the prior section as (2) through (8); and in newly numbered subsection (4), substituted "classes of seven (7) or more students" for "programs" in the first sentence, added the second sentence; inserted "and hearing" before "therapy" and substituted "six (6)" for "three (3)" before "for each exceptional child" in the third sentence; and deleted "elementary school" before "special education program," and substituted "by an elementary school district" for "by a district" before "other than the district" in the first sentence of newly numbered subsection (6).

Effective Dates

Section 3 of Ch. 243, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 11, 1963.

Section 2 of Ch. 96, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 27, 1965.

75-5005. Petition of parents for establishment of special teaching program. The parents or guardians of four (4) or more educable mentally retarded or four (4) or more physically handicapped children of one (1) type, living in one (1) town or in neighboring towns, which children can be taught together, may petition the district board or boards of trustees for the establishment of a special teaching program. The district board or boards of trustees shall request the state board of education for such advice and assistance as the state board of education considers appropriate in the organization of such a program.

History: En. Sec. 5, Ch. 206, L. 1955; amd. Sec. 2, Ch. 163, L. 1967.

Amendments

The 1967 amendment substituted "four (4) or more educable mentally retarded or four (4) or more physically" for "seven (7) or more mentally" before "handicapped children" in the second sentence.

CHAPTER 51—FEDERAL AID

Section 75-5101. Federal funds—authority to accept—expenditure of funds.

75-5101. Federal funds—authority to accept—expenditure of funds. The governor of the state of Montana and the superintendent of public instruction of the state of Montana are hereby authorized on behalf

of the state of Montana to request and accept such funds as are now or will be made available under any act of Congress of the United States, or otherwise, for purposes of public school building construction and/or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Said moneys shall be deposited by the governor and superintendent of public instruction with the treasurer of the state of Montana, and are hereby appropriated and made available to the superintendent of public instruction. All said moneys shall be expended for the purpose of public school building construction and/or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Such expenditures shall be made under the supervision and discretion of the superintendent of public instruction. Any balance in the account in which said moneys are maintained shall not lapse at any time, but shall be continuously available to the superintendent of public instruction for the expenditure consistent with this act and acts of the federal government.

History: En. Sec. 1, Ch. 173, L. 1957; amd. Sec. 67, Ch. 147, L. 1963; amd. Sec. 1, Ch. 282, L. 1965.

Amendments

The 1963 amendment deleted "in a special fund hereinafter created" after "superintendent of public instruction" in the last sentence.

The 1965 amendment substituted "of public schools and public education" for "in the operation and maintenance of public schools" near the end of the first sentence; added "and are hereby appropriated and made available to the superintendent of public instruction" at the end of the second sentence; and added the third, fourth, and fifth sentences.

Repealing Clause

Section 2 of Ch. 282, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 282, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 18, 1965.

75-5102. Repealed.

Repeal

This section (Sec. 2. Ch. 173, L. 1957), relating to the federal aid to education fund and expenditures therefrom, was repealed by Sec. 242, Ch. 147, Laws 1963.

CHAPTER 52—LAW ENFORCEMENT ACADEMY

Section 75-5203. Establishment of Montana law enforcement academy.
75-5206. Powers and duties of the Montana law enforcement academy advisory board.
75-5208. Expenditure of funds.

75-5203. Establishment of Montana law enforcement academy. There is hereby established a Montana law enforcement academy to be located at one of the units of the university of Montana, which unit shall be selected in the manner hereinafter provided. This academy shall be in session for a period to be annually determined by the advisory board.

History: En. Sec. 3, Ch. 7, L. 1959; amd. Sec. 1, Ch. 233, L. 1967.

Amendments

The 1967 amendment substituted "to be annually determined by the advisory board" for "not to exceed three weeks in any one year" in the last sentence.

75-5206. Powers and duties of the Montana law enforcement academy advisory board. The Montana law enforcement academy advisory board shall have the power and it shall be its duty to:

1. to 11. * * *[Same as parent volume.]

12. Accept and expend grants from federal, state, county and city governments or private persons, associations or corporations.

History: En. Sec. 6, Ch. 7, L. 1959; amd. Sec. 2, Ch. 233, L. 1967.

Amendments

The 1967 amendment added subparagraph 12.

75-5208. Expenditure of funds. The expenditure of funds by any city, town, municipality or county for the board, room and travel expenses of the officers attending the academy shall be a lawful expenditure.

History: En. Sec. 8, Ch. 7, L. 1959; amd. Sec. 3, Ch. 233, L. 1967.

Amendments

The 1967 amendment deleted the second sentence which read, "All counties of the state of Montana shall be allowed to expend an amount of money not to exceed ninety dollars ($90.00) for the board and room of the officers attending the academy."

CHAPTER 53—DRIVER EDUCATION

Section 75-5301. Purpose of act.
75-5302. Definition of terms.
75-5303. Superintendent of public instruction to administer program—boards may establish course.
75-5304. Driver education account established—penalty assessments and license proceeds credited to account.
75-5305. Penalty assessment added to bail.
75-5306. Transmittal of penalty assessments.
75-5307. Penalty assessments transmitted by courts.
75-5308. Allocation and disbursement of driver education account—administrative expense.
75-5309. Statements of penalty assessments levied and paid.

75-5301. Purpose of act. It is the purpose of this act to provide the financial assistance necessary to enable the board of trustees of any county high school or any district maintaining a secondary school which includes grades ten (10) to twelve (12) inclusive to offer a course in driver education and by that means to develop in the youth of this state a knowledge of the motor vehicle laws, an acceptance of personal responsibility on the public highways, and an understanding of the causes and consequences of traffic accidents. The course in driver education shall further provide to the youthful drivers of this state training in the skills necessary for the safe operation of motor vehicles.

History: En. Sec. 1, Ch. 226, L. 1965.

Title of Act

An act to provide for driver education; prescribing certain penalty assessments and driver's license fees for the financing thereof; creating an automobile driver education account in the earmarked revenue fund; providing for the duties of the superintendent of public instruction; providing for the reimbursement to school districts and county high schools qualifying under this act; amending section 31-114, R. C. M. 1947; amending section 1 chapter 149, Laws of 1961, compiled as section 94-801[-]2, R. C. M. 1947; amending section 32-1131, R. C. M. 1947; and providing a severability clause.

75-5302. Definition of terms. The following words and phrases whenever used in this act shall have the following meaning:

(1) "Superintendent" or "state superintendent" shall mean the superintendent of public instruction.

(2) "Driver education course" shall mean an accredited course of instruction in driver education which shall meet basic course requirements established by the superintendent of public instruction and each part of said course, both classroom instruction, and behind-the-wheel instruction, shall be taught by a qualified teacher of driver education.

Any or all portions of the course may be taught after regular school hours or on Saturdays as well as on regular school days or as a summer school course, at the option of the local board of trustees. High schools may co-operate in the presentation of such a course.

(3) "Qualified teacher of driver education" shall mean an instructor certified by the superintendent of public instruction to teach either the classroom part or the behind-the-wheel part of the driver education course, or both, under regulations promulgated by the state superintendent.

History: En. Sec. 2, Ch. 226, L. 1965.

75-5303. Superintendent of public instruction to administer program —boards may establish course. (1) The superintendent of public instruction shall administer, supervise and develop the driver education program and shall assist local districts in the conduct of their driver education program.

(2) The board of trustees of any county high school or any district maintaining a secondary school which includes grades ten (10) to twelve (12) inclusive, may establish and maintain a driver education course for pupils enrolled in the secondary schools in the district or county high schools.

History: En. Sec. 3, Ch. 226, L. 1965.

75-5304. Driver education account established—penalty assessments and license proceeds credited to account. (1) There is hereby established an automobile driver education account in the earmarked revenue fund. There shall be levied and paid into this account a penalty assessment, in addition to the fines or bail forfeitures, on all offenses involving a violation of a state statute or a city ordinance relating to the operation or use of motor vehicles, except offenses relating to parking of vehicles, in the following amounts:

(a) Where a fine is imposed, two dollars ($2) for each twenty dollars ($20) of fine, or fraction thereof.

(b) If bail is forfeited, two dollars ($2) for each twenty dollars ($20) of bail, or fraction thereof.

(c) Where multiple offenses are involved, the penalty assessment shall be based on the total fine or bail forfeited for all offenses.

Where a fine is suspended, in whole or in part, the penalty assessment shall be levied in accordance with the fine actually imposed.

(2) The state of Montana shall annually contribute to the account five per cent (5%) of all moneys received by the state of Montana from

the collection of the motor vehicle driver's license fee provided for under the laws of the state of Montana. It shall be paid to the state treasurer of Montana and credited to the automobile driver education account in the earmarked revenue fund.

History: En. Sec. 4, Ch. 226, L. 1965.

75-5305. Penalty assessment added to bail. When any deposit of bail is made for an offense to which section 4 [75-5304] applies, the person making the deposit shall also deposit a sufficient amount to include the penalty assessment for forfeited bail.

History: En. Sec. 5, Ch. 226, L. 1965.

75-5306. Transmittal of penalty assessments. The gross proceeds of the penalty assessments provided for in section 4 [75-5304] shall be transmitted to the city or county treasurer, as the case may be, by the court collecting the same, in the manner and at the times that fines and bail forfeitures are transmitted to such treasurers under law. The city and county treasurers shall transmit to the state treasurer monthly, and without deduction, the amount of such penalty assessments received, which shall be credited to the driver education account in the earmarked revenue fund.

History: En. Sec. 6, Ch. 226, L. 1965.

75-5307. Penalty assessments transmitted by courts. When a court is required under law to transmit fees, fines and forfeitures directly to the state treasurer of Montana, the gross proceeds of the penalty assessments shall likewise be so transmitted, and credited to the driver education account in the earmarked revenue fund by the state treasurer.

History: En. Sec. 7, Ch. 226, L. 1965.

75-5308. Allocation and disbursement of driver education account—administrative expense. All moneys in the automobile driver education account shall be disbursed annually by the superintendent of public instruction to school districts and county high schools providing driver education in accordance with the standards prescribed for such program and in accordance with such rules and regulations as may be promulgated by the superintendent of public instruction for the administration of this act; provided that reimbursements to schools shall be based on the number of pupils successfully completing the driver education program including both classroom instruction and practice driving (behind-the-wheel-driving).

Before such fund is allocated to the qualifying schools there shall be deducted therefrom such amount as may be necessary for the administration of this act including development, printing and distribution of essential materials, preparation of teachers qualified in driver education, supervision of the program, and any and all other purposes deemed necessary by the superintendent of public instruction, such amount not to exceed twelve thousand dollars ($12,000) during the first year this act is in effect and not to exceed twelve thousand dollars ($12,000) annually thereafter. Such state reimbursement for driver education shall be

deposited by the county treasurer to the credit of the school district or county high school in a special nonbudgeted fund as provided in section 75-3722, R. C. M. 1947, and may be expended for the purposes provided by this act.

History: En. Sec. 8, Ch. 226, L. 1965.

75-5309. Statements of penalty assessments levied and paid. All courts handling offenses where there shall be levied and paid a penalty assessment as provided in section 4 [75-5304] of this act, and all city, town and county treasurers, shall furnish to the state superintendent statements of all penalty assessments levied and paid and records of cases which involve such offenses as the state superintendent may request.

History: En. Sec. 9, Ch. 226, L. 1965.

CHAPTER 54—SCHOOL SAFETY PATROLS

Section 75-5401. School safety patrols—establishment.
75-5402. Appointment of members.
75-5403. Liability not to attach.
75-5404. Identity and operation.
75-5405. Training of school safety patrol members.

75-5401. School safety patrols—establishment. In the exercise of authorized control and supervision over pupils attending schools and other educational institutions, both public and private, the governing board or other directing authority of any such school or institution is empowered to authorize the organization and supervision of school safety patrols for the purpose of influencing and encouraging other pupils to refrain from crossing public highways at points other than regular crossings and for the purpose of directing pupils when and where to cross highways.

History: En. Sec. 1, Ch. 170, L. 1965.

Title of Act

An act to establish school safety patrols; empowering the governing board or other directing authority of any school and other educational institutions, both public and private, to authorize the organization and supervision of school safety patrols for the purpose of influencing and encouraging other pupils to refrain from crossing public highways at points other than regular crossings, and for the purpose of directing pupils when and where to cross highways; providing for the qualification and appointment of members of school safety patrols; providing that no liability shall attach to the establishment of school safety patrols; providing for identification and operation of school safety patrols; providing for the training of school safety patrol members; repealing all acts and parts of acts in conflict herewith; and providing for an effective date.

75-5402. Appointment of members. If the parents or guardians of a pupil consent in writing to the school authorities to the appointment of the pupil on a school safety patrol, it is lawful for any pupil over nine years of age to be appointed and designated as a member thereof; provided that in any school in which there are no pupils who have attained such age, any pupil in the highest grade therein may be so appointed and designated.

History: En. Sec. 2, Ch. 170, L. 1965.

75-5403. Liability not to attach. No liability shall attach either to the school, educational institution, governing board, directing authority, or parent or guardian, or any individual director, board member, superintendent, principal, teacher or other school authority by virtue of the organization, maintenance or operation of such school safety patrol because of injuries sustained by any pupil, whether a member of the patrol or otherwise by reason of the operation and maintenance thereof.

History: En. Sec. 3, Ch. 170, L. 1965.

75-5404. Identity and operation. Identification and operation of school safety patrols shall be uniform throughout the state and the method of identification and signals to be used shall be as prescribed by the department of public instruction in co-operation with the Montana highway patrol.

History: En. Sec. 4, Ch. 170, L. 1965.

75-5405. Training of school safety patrol members. Any municipality, city or town of this state may provide for the training of members of the school safety patrol at any authorized school patrol camp located in this state and may pay the expense necessarily incurred in providing such training, out of any funds available for said purpose.

History: En. Sec. 5, Ch. 170, L. 1965.

Repealing Clause

Section 6 of Ch. 170, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 7 of Ch. 170, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 4, 1965.

CHAPTER 55—SCHOOL DISTRICTS FOR NONSECTARIAN CHILD CARE INSTITUTIONS

Section 75-5501. Definition.
75-5502. Creation of new school district.
75-5503. Application for creation of district—plan of operation—area to be included—approval or disapproval—review.
75-5504. Hearing on application—time and place—notice—open to public—record of proceedings.
75-5505. Conduct of hearing—evidence supporting application—opposition.
75-5506. Action by board of trustees of existing district—order of county superintendent—review.
75-5507. Order creating district—description of boundaries—district number—beginning of existence—trustees—laws governing.
75-5508. Acquisition of contiguous land—boundaries of new district extended—children in area to attend school at child care institution.

75-5501. Definition. A licensed nonsectarian child care institution for the purpose of this act shall mean a nonsectarian institution licensed annually and regulated by the state of Montana.

History: En. Sec. 1, Ch. 105, L. 1965.

Title of Act

An act to provide for the creation of a school district within an existing school district by a licensed nonsectarian child institution for the education of children if said procedure is acceptable to the existing school district; providing for the creation and acceptance and the operation of the newly created school district; defining licensed nonsectarian child care institution; providing for the expansion of said school district and the attendance of pupils and designating students who shall be part of newly created school district; and providing for an effective date.

75-5502. Creation of new school district. Notwithstanding any other statutes of Montana relating to the creation, consolidation, annexation or abandonment of school districts, there may be created within any existing school district a new school district by a duly licensed child care institution operating facilities within said existing school district in the manner set forth herein.

History: En. Sec. 2, Ch. 105, L. 1965.

75-5503. Application for creation of district—plan of operation—area to be included—approval or disapproval—review. The county superintendent or superintendents of a school district shall create a separate school district for the education of children attending a duly licensed child care institution;

(1) When an application of a duly licensed child care institution is submitted to him or them; or

(2) When the petition of twenty per cent (20%) of the resident freeholders residing within a school district where such a child care institution is operating is submitted to him or them.

The child care institution within the new district shall submit a plan of operation including details of financing to the county superintendent or superintendents. The plan must be approved by him or them before the institution may operate under it. And be it further approved that all such money as has accrued shall remain to the credit of the parent school district. The application of the duly licensed child care institution or when petition is made shall specifically describe the area proposed to be included within said new school district, the estimated number of qualified electors and of pupils in said district and the estimated assessed valuation and taxable valuation of the property within such area as shown by the last completed assessment roll district. The clerk of the school district shall forthwith advise the county superintendent of the action of the board and the county superintendent of schools shall within ten (10) days after receiving such advice make an order in accordance therewith, provided that if the county superintendent shall conclude that the creating, existence and operation of such a new school district is not practical or feasible he shall have the authority to disapprove the same. The action taken by the county superintendent shall be subject to review by the state superintendent of public instruction whose decision shall be final.

History: En. Sec. 3, Ch. 105, L. 1965.

75-5504. Hearing on application—time and place—notice—open to public—record of proceedings. On receipt of such an application the county superintendent shall set a time for a hearing with respect to said application within thirty (30) days of such receipt and notice thereof shall be posted on the front door of the schoolhouse of the existing school district where the hearing is to be held for at least ten (10) days prior to such hearing. The hearing shall be open to the public and shall be at the schoolhouse of the existing district or at a designated schoolhouse if there be more than one and there shall be in attendance the trustees and clerk of the existing school district who shall be separately notified in

writing of the time and place of the hearing by the county superintendent. The applicant shall also be notified in writing of the time and place of the hearing by the county superintendent. Such notice shall be given at least ten (10) days prior to the hearing. The county superintendent shall preside at the hearing and shall see that a record of the proceedings is kept.

History: En. Sec. 4, Ch. 105, L. 1965.

75-5505. Conduct of hearing—evidence supporting application—opposition. The applicant shall present such information and data in support of its application as it deems necessary and appropriate. The trustees of the existing district and the county superintendent may ask such questions as are pertinent to the application of any person or persons presenting information or data in behalf of the applicant and may present information and data in support of or in opposition to the application.

History: En. Sec. 5, Ch. 105, L. 1965.

75-5506. Action by board of trustees of existing district—order of county superintendent—review. Within thirty (30) days after the hearing the board of trustees of the existing district shall at a regular or special meeting thereof determine by majority vote whether or not the proposed new district is acceptable to the existing district. The clerk of the school district shall forthwith advise the county superintendent of the action of the board and the county superintendent shall within ten (10) days after receiving such advice make an order in accordance therewith, provided that if the county superintendent shall conclude that the creating, existence and operation of such a new school district is not practical nor feasible he shall have the authority to disapprove the same. The action taken by the county superintendent shall be subject to review by the state superintendent of public instruction whose decision shall be final.

History: En. Sec. 6, Ch. 105, L. 1965.

75-5507. Order creating district—description of boundaries—district number—beginning of existence—trustees—laws governing. If the order of the county superintendent shall provide for the creation of a new school district he shall specifically describe the boundaries thereof, designate the number of such school district and the said new district shall exist from and after the first day of July following the making of such an order. The county superintendent shall name the first trustees and designate the terms of office to be served by each until subsequent school elections shall determine their successors. All of the existing laws relating to school districts and their operations not inconsistent with this act shall apply to and govern such newly created district.

History: En. Sec. 7, Ch. 105, L. 1965.

75-5508. Acquisition of contiguous land—boundaries of new district extended—children in area to attend school at child care institution. In the event the duly licensed child care institution shall acquire land contiguous to the new school district after the creation of such school district, all children of persons residing upon such land shall attend the school for

which the new school district was created for the duly licensed child care institution and such acquisition of land shall, upon acquisition by the duly licensed child care institution, be deemed for all purposes attendant with school and school affairs as part of the school district created for the duly licensed child care institution and the county superintendent of schools shall consider such newly acquired land as may be acquired as the new boundary for the school district created for the duly licensed child care institution and such lands acquired shall be deemed a part of and within the duly licensed child care institution's school district.

History: En. Sec. 8, Ch. 105, L. 1965.

Effective Date

Section 9 of Ch. 105, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 1, 1965.

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Part 1

1967 Cumulative Pocket Supplement

Containing

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AND

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NEW LAWS IN VOLUME 5 (Part 1)

For index see pocket supplement to Replacement Volume 9

ENACTED IN 1967

Arts council, state, 82-3601 to 82-3609.
Bond Validating Act, 79-2001 to 79-2004.
Claims against state, assignment, 83-901 to 83-904.
Criminal investigator, state, 82-414 to 82-420.
Entomologist, state, 82-804.1 to 82-804.4.
Glendive mental retardation center, 80-2310 to 80-2312.
Juvenile correctional institutions, 80-1410 to 80-1413.
Juvenile reception and evaluation center, 80-1704.
Law enforcement, teletypewriter communication system, 82-3901 to 82-3906.
Legislative Audit Act, 79-2301 to 79-2313.
Mental health programs and centers, 80-2401.1, 80-2405 to 80-2411.
Planning and Economic Development Act, 82-3701 to 82-3709.
Post-attack Resource Management Act, 77-1501 to 77-1508.
Post-Enemy-Attack Continuity in Government Act, 82-3801 to 82-3809.
Public contractors delinquent in performance, 82-1927, 82-1928.
Residence of public contractor, determination, 82-1925.1.
State building program, scheduling, 78-910.
State fire marshal, promulgation of rules, 82-1202.1, 82-1202.2.
State land resources, development, 81-2401 to 81-2408.
State lands, equalization payments to counties, 81-1115 to 81-1121.

AMENDMENTS IN VOLUME 5 (Part 1)

Adjutant general, 77-117, 77-120.
Administration, state department, 82-3306, 82-3316.
Aging problems, state committee, 82-3501 to 82-3506.
Bonds, long-range building program, 79-2202, 79-2203, 79-2205.
Civil defense, 77-1304.
Controller, state, 82-110.
Examiner, state, 82-1002, 82-1005, 82-1007, 82-1009, 82-1011.
Fire marshal, state, 82-1201, 82-1202, 82-1208, 82-1209, 82-1211, 82-1218.
Hail insurance, state board, 82-1516, 82-1519.
Indian affairs, co-ordinator, 82-2702.
Natural resources, state council, 82-3001.
Purchasing department, state, 82-1916.
Soil and water conservation districts, 76-103, 76-104, 76-107.
State institutions,
- Boulder river school and hospital, 80-2301 to 80-2309.
- Deaf and blind, 80-105, 80-107.
- Department of institutions, 80-1403, 80-1404, 80-1405.
- Galen state hospital, 80-1701 to 80-1703.
- Payment for care of residents, 80-1601.
- Vocational and industrial schools, 80-2202 to 80-2206, 80-2209 to 80-2212.
- Warm Springs state hospital, 80-2401 to 80-2404.

State lands, 81-209, 81-304, 81-502, 81-1403.
Supreme court clerk, 82-503.
Supreme court reports, 82-2002.
Trust and legacy fund, invested money, 79-1202.

MONTANA REVISED CODES

TITLE 76—SOIL AND WATER CONSERVATION

Chapter
1. State soil and water conservation districts law, 76-103, 76-104, 76-107.

CHAPTER 1—STATE SOIL AND WATER CONSERVATION DISTRICTS LAW

Section
76-103. Definitions.
76-104. State soil conservation committee.
76-107. Appointment, qualifications and tenure of supervisors.

76-103. Definitions. Wherever used or referred to in this act, unless a different meaning clearly appears from the context:

(1) to (9). * * * [Same as parent volume.]

(10) "Land occupier" or "occupier of land" includes any person, firm, corporation, municipality or other entity who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this act, whether as owner, lessee, renter, tenant, or otherwise;

(11). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967.

Amendments

The 1967 amendment inserted "municipality or other entity" after "corporation" in subdivision (10).

76-104. State soil conservation committee. A. and B. * * * [Same as parent volume.]

C. The committee shall annually elect a chairman from its own membership. State committeemen shall continue as members of the state committee so long as they shall retain the offices by virtue of which they shall be serving on the committee. The appointed farmer members shall hold office for four (4) years and their term of office shall be concurrent with the governor. A majority of the committee shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. Ex officio members of the committee shall receive no compensation for their services on the committee. Other members of the committee shall receive twenty dollars ($20.00) per day while on duty. All members of the state committee shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee. The committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate

record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the account of receipts and disbursements.

D. * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 72, L. 1939; amd. Sec. 1, Ch. 21, L. 1951; amd. Sec. 1, Ch. 47, L. 1967.

Amendments

The 1967 amendment substituted "twenty dollars" for "five dollars" in subdivision C.

76-107. Appointment, qualifications and tenure of supervisors. The governing body of the district shall, if there are no incorporated municipalities within the boundaries of said district, consist of five (5) supervisors, elected as provided hereinabove.

In all cases where the boundaries of such soil and water conservation district includes any incorporated municipality or municipalities, said board of supervisors, in addition to said five (5) elected supervisors, shall consist of two (2) appointed supervisors, making a total of seven (7) supervisors in such districts. The two (2) appointed supervisors must be residents of the municipalities within the district. The legislative bodies of the incorporated municipalities within the district shall, after consultation with the elected supervisors, appoint the two (2) additional supervisors. The term of office of the appointed supervisors shall be three (3) years.

Where there are more than two (2) incorporated municipalities within a district then the two (2) appointed supervisors shall represent all the municipalities and urban interests in the district, and no municipality shall have more than one (1) appointed supervisor residing therein.

The supervisors shall annually elect a chairman from their members. The term of office of each supervisor shall be three (3) years, except that the supervisors who are first appointed shall be designated to serve for terms of one (1) and two (2) years, respectively, from the date of their appointment. An elected supervisor shall hold office until his successor has been elected and has qualified. Any vacancy occurring in the office of an elected supervisor shall be filled by appointment by the remaining supervisors until the next regular election, when a successor shall be elected to serve the unexpired term. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor shall receive no compensation for his services, but he shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.

The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties, and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require, or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents or employees, such powers and duties as they may deem proper. The supervisors shall furnish to the state soil conser-

vation committee, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as may be required in the performance of its duties under this act.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings, and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the state soil conservation committee upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967.

Amendments

The 1967 amendment inserted "if there are no incorporated municipalities within the boundaries of said district" in the first sentence of the first paragraph; inserted the second and third paragraphs; and inserted "an elected" before "supervisor" in the third and fourth sentences of the fourth paragraph.

TITLE 77—SOLDIERS, SAILORS AND MILITARY AFFAIRS

Chapter
1. Militia, composition, enrollment—officers, general provisions, 77-117, 77-120.
13. Civil defense, 77-1304.
15. Post-attack resource management, 77-1501 to 77-1508.

CHAPTER 1—MILITIA, COMPOSITION, ENROLLMENT—OFFICERS, GENERAL PROVISIONS

Section
77-117. The adjutant general of the state—assistant adjutants general.
77-120. Duties of adjutant general—salary.

77-117. (1346) **The adjutant general of the state—assistant adjutants general.** There shall be an adjutant general of the state of Montana, who shall be appointed by the governor, and shall have the rank of major general. He shall hold office for the term for which the governor appointing him shall have been elected, and until his successor shall have been appointed. He shall be selected from the active list of the national guard of this state and shall have been federally recognized in the rank of major or above immediately prior to his appointment. He shall have had at least ten (10) years of service as an officer of the active national guard of this state during the fifteen (15) years immediately prior to his appointment. He shall perform the duties prescribed for him in this chapter and in the regulations now or hereafter issued thereunder, and in the statutes of the United States now or hereafter enacted, and such duties as pertain to the duties of the chiefs of staff departments. The salary of the adjutant general shall be in such amount as may be specified by the legislative assembly in the appropriation to the adjutant general. If the legislative assembly does not specify the maximum salary of the adjutant general, any increase in the salary of the adjutant general must be approved by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry, provided, however, that no part of said salary shall be paid by the state when the adjutant general is on extended active duty with the United States military service or is receiving pay as a civilian employee of the federal government; provided that if, by reason of the call or draft of officers of the Montana national guard into the federal service, there are no officers of the national guard possessing the requisite qualifications as set forth above for appointment, then any officer of the national guard may be appointed as acting adjutant general.

The adjutant general shall establish, within the state headquarters of the Montana national guard, separate departments for the army national guard and the air national guard. Each department shall have a brigadier general at its head, who will be referred to as assistant adjutant general for Montana army national guard and assistant adjutant general for Montana air national guard. The assistant adjutants general shall be appointed

by the adjutant general with the approval of the governor. One (1) shall be selected from the active list of the Montana army national guard and the other from the active list of the Montana air national guard, and each must have the qualifications set forth above for appointment as adjutant general. They shall perform such duties as are prescribed by the adjutant general.

History: En. Sec. 23, Ch. 191, L. 1919; re-en. Sec. 1346, R. C. M. 1921; amd. Sec. 1, Ch. 21, L. 1949; amd. Sec. 1, Ch. 26, L. 1955; amd. Sec. 1, Ch. 272, L. 1959; amd. Sec. 1, Ch. 74, L. 1963; amd. Sec. 5, Ch. 237, L. 1967.

Amendments

The 1967 amendment, in the first paragraph, substituted the sixth and seventh sentences and the portion of the eighth sentence preceding the proviso, for a sentence fixing the salary at $7,500.

77-120. (1349) **Duties of adjutant general—salary.** The adjutant general shall be ex officio chief of staff. He shall hold office until his successor is appointed and qualified. He shall appoint the civilian employees of his department, and may remove any of them in his discretion.

The expenses of the adjutant general's department, necessary to the military service, shall be audited, allowed, and paid as other military expenditures are audited, allowed, and paid.

1 to 11. * * * [Same as parent volume.]

12. The annual salary of the assistant adjutant shall be in such amount as may be specified by the legislative assembly in the appropriation to the adjutant general. If the legislative assembly does not specify the maximum salary of the assistant adjutant general, any increase in the salary of the assistant adjutant general must be approved by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry.

History: En. Sec. 20, Ch. 191, L. 1919; re-en. Sec. 1349, R. C. M. 1921; subd. 12: En. Sec. 1, Ch. 118, L. 1947; re-en. Sec. 1, Ch. 20, L. 1949; subd. 13: Sec. 2, Ch. 118, L. 1947 as added Sec. 1, Ch. 20, L. 1949; amd. Sec. 2, Ch. 272, L. 1959; amd. Sec. 35, Ch. 177, L. 1965; amd. Sec. 6, Ch. 237, L. 1967.

Amendments

The 1967 amendment substituted subparagraph 12 for one which read, "The annual salary of the adjutant general of the state of Montana shall be four thousand two hundred dollars ($4,200.00)"; and deleted subparagraph 13, which read, "The annual salary of the assistant adjutant general of the state of Montana shall be three thousand six hundred dollars ($3,600.00)."

CHAPTER 13—CIVIL DEFENSE

Section
77-1304. State civil defense agency.

77-1304. State civil defense agency. (a) There is hereby created in the state adjutant general's department, a civil defense agency, with a director of civil defense (hereinafter called the "director") who shall be the head thereof. The director shall be appointed by, and shall hold office at the pleasure of the governor, and shall be compensated at a salary to be fixed by the legislative assembly in the appropriation to the adjutant general. If the legislative assembly does not specify the maximum salary of the director of civil defense, any increase in the salary of the director

must be approved by the board of examiners. Before approving any salary increase the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The director shall devote his full time and energies to the duties of director of civilian defense including co-operation and co-ordination with the commander of the home guard.

(b) to (e). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 218, L. 1951; amd. Sec. 3, Ch. 220, L. 1953; amd. Sec. 7, Ch. 237, L. 1967.

Amendments

The 1967 amendment, in subsection (a), substituted "by the legislative assembly * * * and private industry" before "The director" for "by the governor, which salary however, shall not exceed six thousand six hundred dollars ($6,600.00) per year."

CHAPTER 15—POST-ATTACK RESOURCE MANAGEMENT

Section
77-1501. Citation of act.
77-1502. Legislative findings—policy of state.
77-1503. Definition of terms.
77-1504. State emergency resource planning committee—composition.
77-1505. Governor's powers and duties under act.
77-1506. Proclamation of emergency—governor's powers during emergency.
77-1507. Judicial inquiry as to emergency proclamation and facts.
77-1508. Penalty for violation of rules and regulations.

77-1501. Citation of act. This act may be cited as the "Post-attack Resource Management Act."

History: En. Sec. 1, Ch. 297, L. 1967.

Title of Act

An act to provide for the emergency management of resources.

77-1502. Legislative findings—policy of state. (1) The legislature recognizes that an attack upon the United States is a possibility; that such attack might be of unprecedented size and destructiveness; that a considerable period of time may elapse after an attack before federal operational control over the management of resources can be instituted; and that federal planning and activities with respect to post-attack recovery and rehabilitation necessarily are predicated on the ability of the states and their political subdivisions to prepare for, and respond promptly to, the problems created by an attack. Therefore, it is hereby found and declared to be necessary:

(a) To create an office of emergency resource management for the execution of a plan for emergency resource management;

(b) To confer upon the governor and upon the executive heads of governing bodies of political subdivisions of the state the emergency powers provided herein.

(2) It is further declared to be the purpose of this act and the policy of this state that all resource management functions of this state be coordinated to the maximum extent with the comparable functions of the federal government, of other states and localities, and of private agencies to the end that the most effective preparation and use may be made of available man power, resources, and facilities in an emergency.

History: En. Sec. 2, Ch. 297, L. 1967.

77-1503. Definition of terms. As used in this act, unless the context clearly indicates otherwise:

(1) "Emergency Resources Management Plan" shall mean that plan prepared by the state emergency resources planning committee, approved by the federal office of emergency planning and adopted by the governor, which sets forth the organization, administration, and functions for the emergency management by the state government of essential resources and economic stabilization within the state. The plan shall provide an emergency organization and emergency administrative policies and procedures for the conservation, allocation, distribution, and use of essential resources available to the state following a civil defense emergency such as an attack upon the United States. It shall be supplemental to the national plan for emergency preparedness adopted by the president of the United States, and shall become operative upon the establishment of a civil defense emergency. To the extent that the federal government is either incapable of or not prepared to conduct its emergency resources management program, the state plan will substitute for and replace the federal program until such time as the federal program becomes effective in the state.

(2) "Enemy attack" means an actual attack by a foreign nation by hostile air raids, or other forms of warfare, upon this state or any other state or territory of the United States.

(3) "Political subdivision" shall mean any county, city, town, or township of the state.

History: En. Sec. 3, Ch. 297, L. 1967.

77-1504. State emergency resource planning committee—composition. (1) The governor may establish a state emergency resource planning committee (hereinafter referred to as the "state committee") and the office of state emergency planning director (hereinafter referred to as the "director"), and appoint to serve at his pleasure the members of such state committee and the director.

(2) The state committee shall consist of the governor, who shall be chairman, the director, other state officials designated by the governor, and persons representative of industry, commerce, labor, agriculture, civic, governmental, and professional groups designated by the governor. In the absence of the governor, the director shall act as chairman.

History: En. Sec. 4, Ch. 297, L. 1967.

77-1505. Governor's powers and duties under act. (1) The governor shall have general direction and control of the emergency resources management within this state and all officers, boards, agencies, individuals, or groups established under the emergency resource management plan.

(2) In performing his duties under this act, the governor is authorized to co-operate with the federal government, with other states, and with private agencies in all matters pertaining to the emergency management of resources.

(3) In performing his duties under this act, and to effect its policies and purpose, the governor is further authorized and empowered to make, amend, and rescind the necessary orders, rules, and regulations to carry

out the provisions of this act within the limits of authority conferred upon him herein, with due consideration of the emergency resources management plans of the federal government.

History: En. Sec. 5, Ch. 297, L. 1967.

77-1506. Proclamation of emergency—governor's powers during emergency. (1) Following an attack, the governor, if he finds such action necessary to deal with the danger to the public safety caused thereby or to aid in the post-attack recovery or rehabilitation of the United States or any part thereof, shall declare by proclamation the existence of a post-attack recovery and rehabilitation emergency. Any such proclamation shall be ineffectual, unless the legislature is then in session or the governor simultaneously issues an order convening the legislature in special session within forty-five (45) days.

(2) During the period when the proclamation issued pursuant to subsection (1) of this section is in force, or during the continuance of any emergency declared by the president of the United States or the congress calling for post-attack recovery and rehabilitation activities, subject to the limitations set forth in this act, and in a manner consistent with any rules, regulations, or orders and policy guidance issued by the federal government, the governor may issue, amend and enforce rules, regulations, and orders to:

(a) Control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means, the use, sale or distribution of food, feed, fuel, clothing and other commodities, materials, goods or services;

(b) Prescribe and direct activities in connection with but not limited to use, conservation, salvage, and prevention of waste of materials, services, and facilities, including production, transportation, power, and communication facilities, training and supply of labor, utilization of industrial plants, health and medical care, nutrition, housing, including the use of existing and private facilities, rehabilitation, education, welfare, child care, recreation, consumer protection, and other essential civil needs; and

(c) Take such other action as may be necessary for the management of resources following an attack.

(3) All rules, regulations, and orders issued pursuant to authority conferred by this act shall have the full force and effect of law during the continuance of a proclamation or declaration of emergency as contemplated by this section, when a copy of the rule, regulation, or order is filed in the office of the secretary of state or, if issued by a local or area official, when filed in the office or offices of the county clerk and recorder. If, by reason of destruction or disruption attendant upon or resulting from attack, the filing requirements of this subsection cannot be met, public notice by such means as may be available shall be deemed a complete and sufficient substitute. All existing laws, ordinances, rules, regulations, and orders inconsistent with the provisions of this act, or any rule, regulation or order issued under the authority thereof, shall be inoperative during the period of time and to the extent such inconsistency exists.

(4) Any authority exercised pursuant to a proclamation or emergency contemplated by this section may be exercised with respect to the entire territory over which the governor or other official, as the case may be, has jurisdiction, or as to any specified part thereof.

(5) The governor's power and authority to issue a proclamation following an attack shall be terminated by the passage of a joint resolution of the legislature or by declaration of the termination of the emergency by the president or by the congress; provided that the proclamation shall terminate automatically six (6) months after issuance and a similar proclamation may not be issued unless concurrence is given thereto by a joint resolution of the legislature.

History: En. Sec. 6, Ch. 297, L. 1967.

77-1507. Judicial inquiry as to emergency proclamation and facts. Every proclamation and the facts related therein issued under this act shall be subject to judicial inquiry by the state supreme court as to the existence of the facts underlying the issuance of the proclamation and whether such action was reasonable under the circumstances.

History: En. Sec. 7, Ch. 297, L. 1967.

77-1508. Penalty for violation of rules and regulations. Any person violating any of the rules, regulations or orders adopted and promulgated under section 6 [77-1506] of this act shall, upon conviction thereof, be subject to a fine of not to exceed ten thousand dollars ($10,000) or to a term of imprisonment of not to exceed five (5) years, or both.

History: En. Sec. 8, Ch. 297, L. 1967.

TITLE 78—STATE CAPITOL

Chapter
9. Future building needs, 78-910.

CHAPTER 9—FUTURE BUILDING NEEDS

Section
78-910. Scheduling of state building program.

78-910. Scheduling of state building program. The state controller shall, by careful advance planning, ordering of construction priorities, consultation with architects, and timing of bid lettings, direct the building program of the state in such a manner as to reduce to a minimum the effects of weather on construction and to stabilize as far as possible the work opportunities of the construction labor force.

History: En. Sec. 1, Ch. 116, L. 1967.

Title of Act

An act to require the state controller to schedule the state's building program in such a manner as to minimize the importance of weather on construction and to stabilize the work opportunities of the construction labor force.

TITLE 79—STATE FINANCE

Chapter
12. Montana trust and legacy fund—unified investment plan, 79-1202.
20. Bond Validating Act, 79-2001 to 79-2004.
22. Long-range building program bonds, 79-2202, 79-2203, 79-2205.
23. Legislative Audit Act, 79-2301 to 79-2313.

CHAPTER 12—MONTANA TRUST AND LEGACY FUND—UNIFIED INVESTMENT PLAN

Section
79-1202. Moneys to be invested according to unified plan.

79-1202. (5668.20) **Moneys to be invested according to unified plan.** 1. * * * [Same as parent volume.]

2. The state board of land commissioners is hereby authorized and required to invest in the long term investment fund the following: Moneys administered by the Montana highway patrolmen's retirement board in excess of twenty-five thousand dollars ($25,000); moneys administered by the public employees' retirement board; moneys administered by the industrial accident board; all moneys subject to investment as designated by the teachers' retirement board; moneys designated as available by the Montana fish and game commission and all other moneys designated by statute. Moneys in the long term investment fund may be invested as follows:

(a) to (c). * * * [Same as parent volume.]

(d) In first mortgages on unencumbered real property when such mortgages are guaranteed or insured in the amount of thirty per centum (30%) or more of the loan made in the event of default by the United States government or any agency or corporate agency of the United States government and in obligations of housing authorities subject to the terms and limitations of section 35-143, and in unencumbered real property, and in first mortgages of unencumbered real property, not exceeding seventy-five per cent (75%) of the value of the property, provided, however, no more than fifty per centum (50%) of the funds in one (1) account shall be invested in such mortgages and real property.

(e) In first mortgage bonds, debentures, notes and other evidences of indebtedness issued, assumed or guaranteed by any solvent and operating corporation existing under the laws of the United States of America or any state thereof which bonds, debentures, notes and other evidences of indebtedness are, at the time of such investment, within the three (3) highest quality grades for the rating of such bonds, debentures, notes and other evidences of indebtedness by any nationally recognized investment rating agency.

(f). * * * [Same as parent volume.]

3. The state board of land commissioners is hereby authorized and required to invest in the short term investment fund any surplus cash in the office of the state treasurer; any money in the sinking fund, which is

not required for the immediate payment of any bond principal or interest, or which cannot be used for payment and redemption of bonds outstanding because of the same not being redeemable under the option provisions contained therein; any Montana highway patrolmen's retirement moneys less than twenty-five thousand dollars ($25,000) as directed by the Montana highway patrolmen's retirement board and any other moneys designated by statute to be so invested or any moneys in the custody of any officer or officers of the state, or any governing body of any city, county or school district, the investment of which moneys is requested by the officer, or officers or governing body and which moneys are subject to investment. The moneys in the short term investment fund may be invested as follows:

(a) and (b). * * * [Same as parent volume.]

All securities purchased and all cash on hand for each account or subfund shall be kept separate in the short term investment fund and all interest collected shall be credited to the account or subfund for which the securities were purchased.

The state board of land commissioners is hereby authorized to employ, for the purpose of securing advice on retention, sale or purchase of securities, an expert on financial matters who has had a minimum of ten (10) years' experience in the investment field. The said board is also authorized to obtain financial and investment counsel and services from qualified persons and sources on a fee or contract basis.

History: En. Sec. 2, Ch. 70, L. 1929; amd. Sec. 8, Ch. 176, L. 1953; amd. Sec. 1, Ch. 118, L. 1957; amd. Sec. 1, Ch. 173, L. 1959; amd. Sec. 1, Ch. 67, L. 1963; amd. Sec. 16, Ch. 147, L. 1963; amd. Sec. 1, Ch. 256, L. 1963; amd. Sec. 1, Ch. 78, L. 1967; amd. Sec. 1, Ch. 185, L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 78 and once by Ch. 185. Neither amendatory act referred to or incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section embodying the amendments made by both 1967 acts.

Amendments

Chapter 78, Laws of 1967, substituted the last sentence of the last paragraph for "and there shall not be paid for such services an amount in excess of one thousand dollars ($1,000.00) in any one fiscal year."

Chapter 185, Laws of 1967, reduced the insurance requirement in the first clause of paragraph 2(d) from 50% to 30%; inserted "and in unencumbered real property * * * value of the property" in paragraph 2(d); added "and real property" at the end of paragraph 2(d); and deleted "public utility" before "corporation" in paragraph 2(e).

Effective Date

Section 2 of Ch. 185, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 28, 1967.

CHAPTER 20—BOND VALIDATING ACT

Section
79-2001. Short title of act.
79-2002. Definitions.
79-2003. Validation of bonds heretofore issued.
79-2004. Act does not apply to pending actions.

79-2001. Short title of act. This act may be cited as "The 1967 Bond Validating Act."

History: En. Sec. 1, Ch. 96, L. 1967.

Compiler's Notes

Chapter 96 of Laws 1967 was substituted for Ch. 75, Laws 1965 and given the

same section numbers, as it is almost identical with the 1965 law. Previous bond validating acts enacted since 1935 were: Ch. 6, Laws 1937; Ch. 164, Laws 1939; Ch. 45, Laws 1941; Ch. 117, Laws 1943; Ch. 196, Laws 1945; Ch. 81, Laws 1947; Ch. 2, Laws 1953; Ch. 5, Laws 1955; Ch. 4, Laws 1957; Ch. 16, Laws 1959; Ch. 19, Laws 1961; Ch. 100, Laws 1963.

Title of Act

An act validating, ratifying, approving and confirming bonds and other instruments or obligations, heretofore issued by public bodies of this state, and all proceedings heretofore taken by such public bodies, to authorize and issue such bonds, instruments and other obligations, however described, and providing that this act may be cited as "The 1967 Bond Validating Act"; containing a repealing clause and providing an effective date.

79-2002. Definitions. The following terms, wherever used or referred to in this act, shall have the following meanings:

(1) The term "public body" shall include a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state of Montana, and shall also include the state board of education, the state board of examiners, the state water conservation board, the state highway commission, or any other governmental agency of this state.

(2) The term "bonds" shall include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, income or property of a public body, including all instruments or obligations payable from a special fund.

History: En. Sec. 2, Ch. 96, L. 1967.

79-2003. Validation of bonds heretofore issued. All bonds heretofore issued by any public body of this state, and all proceedings heretofore taken for the authorization and issuance of such bonds, for the levy, establishment, pledge and appropriation of taxes, special assessments and other charges and revenues to pay such bonds, and for the sale, exchange, execution and delivery thereof, are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing board or commission or officers thereof, to authorize and issue such bonds, or to sell, exchange, execute or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings or in such sale, exchange, execution or delivery, and bonds of such public bodies, whether heretofore issued or hereafter issued under the authority of proceedings heretofore taken, are and shall be binding, legal, valid and enforceable obligations of such political body.

History: En. Sec. 3, Ch. 96, L. 1967.

79-2004. Act does not apply to pending actions. This act shall not apply to or affect any action or appeal instituted on or before January 1, 1967, in which the validity of any such proceedings or of any such bonds is at issue.

History: En. Sec. 4, Ch. 96, L. 1967.

Repealing Clause

Section 5 of Ch. 96, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 6 of Ch. 96, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 21, 1967.

CHAPTER 22—LONG-RANGE BUILDING PROGRAM BONDS

Section
79-2202. Long-range building program bonds.
79-2203. Sinking fund account.
79-2205. Authorization of bonds.

79-2202. Long-range building program bonds. (1) When authorized by the legislative assembly, and within the limits of such authorization and the further limitations in this section, the board may issue and sell bonds of the state of Montana in such manner as it shall deem necessary and proper to provide funds to finance the long-range building program. All bonds issued hereunder shall contain a statement that they are not and shall never become a debt or liability of the state of Montana within the meaning of any constitutional or statutory limitation or provision, and that no ad valorem tax may be levied upon property within the state of Montana to pay principal thereof or interest thereon, but that the bonds and interest are payable solely from the proceeds of special taxes pledged and appropriated to the sinking fund account as provided in this chapter, and shall contain the pledge of the state of Montana to continue to levy and collect said special taxes and to apply the proceeds thereof to the retirement of said bonds and the payment of interest thereon. Bonds may be issued hereunder to provide funds for the payment or redemption of the outstanding War Veterans' Compensation Bonds and World War I Veterans' Compensation Bonds issued pursuant to Initiative No. 54, and the amendment thereof, chapter 270, Laws of 1963, and the outstanding long-range building program bonds issued under this section.

(2) to (4). * * * [Same as parent volume.]

(5) All proceeds of bonds issued hereunder shall be deposited in the clearance fund account, except that any premiums and accrued interest received shall be deposited in the sinking fund account. For the purposes set forth in subdivision (1) hereof, the state treasurer acting by and with the approval of the state board of examiners may set aside such funds as may be necessary to assure the redemption, or payment at maturity, of all of the outstanding War Veterans' Compensation Bonds and World War I Veterans' Compensation Bonds and as may be necessary or required to fulfill the obligations of the state of Montana by virtue thereof. With such funds the state treasurer with the approval of the state board of examiners is hereby authorized to call said bonds for redemption in accordance with the provisions thereof, at any redemption date, to pay said bonds on the maturity dates thereof, to deposit securities in escrow for the purpose of assuring such payments at future dates, and to take such other steps as may be necessary to fulfill all of the obligations of the state of Montana existing under the provisions of said bonds and the laws and resolutions authorizing the same.

(6) The state board of examiners is hereby authorized to employ a fiscal agent to assist it in the performance of its duties hereunder.

History: En. Sec. 2, Ch. 276, L. 1965; amd. Sec. 2, Ch. 318, L. 1967.

Amendments

The 1967 amendment, in subsection (1), added the last sentence; in subsection (5), added the last two sentences; and added subsection 6.

79-2203. Sinking fund account. (1) to (4). * * * [Same as parent volume.]

(5) The state hereby pledges and appropriates, and directs to be credited as received to the sinking fund account, eleven per centum (11%) of all money received from the collection of the income tax and the corporation license tax referred to in section 84-1901, and such additional amount of said taxes, if any, as may at any time be needed to comply with the principal and interest and reserve requirements stated in subsection (2) of this section; provided that no more than eleven per centum (11%) of such tax collections shall be deemed to be pledged for the purpose of subsection (3) of section 79-2202. The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of said taxes.

(6) The state pledges and appropriates and directs to be credited as received to the sinking fund account all money received from the collection of each of the excise taxes on cigarettes and other tobacco products which are levied, imposed and assessed by section 84-5606, subdivisions (3) and (4), as amended, after the payment and redemption in full of the outstanding bonds for which said taxes have heretofore been pledged and appropriated, or after the necessary funds have been set aside for such payment and redemption as provided in this act. The state also pledges and appropriates and directs to be credited as received to the sinking fund account all money received from the collection of the excise taxes on other tobacco products which are or may hereafter be levied, imposed and assessed by law for that purpose. Nothing herein shall impair or otherwise affect the provisions and covenants contained in the resolutions authorizing the War Veterans' Compensation Bonds, the World War I Veterans' Compensation Bonds or the presently outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of all taxes referred to in this subdivision (6).

History: En. Sec. 3, Ch. 276, L. 1965; amd. Sec. 3, Ch. 318, L. 1967.

Amendments

The 1967 amendment, in subsection (5), increased appropriations to the sinking fund from 5 per centum to 11 per centum; in subsection (6), deleted "After approval through initiative or referendum by a majority of the electors voting at an election prior to January 1, 1967," at the beginning of the subsection; deleted "upon such approval also" before "pledges"; substituted "said taxes have" for "any such tax has" before "heretofore"; added "or after the necessary funds * * * in this act" at the end of the first sentence; and added the last three sentences.

79-2205. Authorization of bonds. The board is authorized to issue and sell long-range building program bonds in an amount not exceeding thir-

teen million five hundred thousand dollars ($13,500,000), over and above the amount of the long-range building program bonds outstanding January 1, 1967, upon the conditions and in the manner stated in this chapter. The board is also authorized to issue and sell long-range building program bonds in such amount as may be required to provide funds for the payment or redemption of outstanding bonds as contemplated in section 79-2202, subdivisions 1 and 5.

History: En. Sec. 5, Ch. 276, L. 1965; amd. Sec. 4, Ch. 318, L. 1967.

Amendments

The 1967 amendment inserted "over and above the amount of the long-range building program bonds outstanding January 1, 1967," before "upon the conditions"; and added the last sentence.

CHAPTER 23—LEGISLATIVE AUDIT ACT

Section
79-2301. Title and purpose of act.
79-2302. Definitions.
79-2303. Legislative audit committee—appointment and term of members—officers.
79-2304. Meetings.
79-2305. Appointment and qualifications of legislative auditor.
79-2306. Appointment of employees.
79-2307. Term and removal of legislative auditor.
79-2308. Duties of legislative auditor.
79-2309. Audit standards and objectives.
79-2310. Recommendations of legislative auditor.
79-2311. Legislative auditor to assist legislative assembly during sessions.
79-2312. Information from state agencies.
79-2313. Audit charge against earmarked money.

79-2301. Title and purpose of act. This act may be cited as "The Legislative Audit Act." Because the legislative assembly is responsible for authorizing the expenditure of public moneys, designating the sources from which moneys may be collected, shaping the administration to perform the work of state government, and is held finally accountable for fiscal policy, the legislative assembly should also be responsible for the audit of fiscal accounts and records so that it may be assured that its directives have been faithfully carried out. It is the intent of this act that each agency of state government be audited for the purpose of furnishing the legislative assembly with factual information vital to the discharge of its legislative duties.

History: En. Sec. 1, Ch. 249, L. 1967.

Title of Act

"The Legislative Audit Act" creating a legislative audit committee and the office of legislative auditor and providing for the audit of state agencies by the legislative auditor; amending sections 82-1002, 82-1005, 82-1007, 82-1009, 82-110, 71-206, 4-347, 4-230, and 5-910, R. C. M. 1947; repealing sections 82-1014, 82-1015, 82-1016, 84-4403, 84-4404, and 84-4405, R. C. M. 1947, and providing an effective date.

79-2302. Definitions. In this act

(1) "State agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public moneys by virtue of an appropriation from the legislative assembly, or that handles money on behalf of the state, or that holds any trust or agency moneys from any source.

(2) "Committee" means the legislative audit committee.

History: En. Sec. 2, Ch. 249, L. 1967.

79-2303. Legislative audit committee—appointment and term of members—officers. The legislative audit committee consists of four (4) members of the Senate and four (4) members of the House of Representatives appointed before the sixtieth legislative day in the same manner as standing committees of the respective houses are appointed. A vacancy on the committee occurring when the legislative assembly is not in session shall be filled by the selection of a member of the legislative assembly by the remaining members of the committee. No more than two (2) of the appointees of each house shall be members of the same political party. Membership on the committee shall terminate with the termination of each member's term of office, or on December 31 of the year following the year in which the appointment was made, whichever event first occurs. The committee shall elect one of its members as chairman and such other officers as it deems necessary.

History: En. Sec. 3, Ch. 249, L. 1967.

79-2304. Meetings. The committee shall meet once each quarter to advise and consult with the legislative auditor. Committee members shall be reimbursed from the appropriation to the office of the legislative auditor for their actual and necessary expenses incurred as a result of such interim meetings.

History: En. Sec. 4, Ch. 249, L. 1967.

79-2305. Appointment and qualifications of legislative auditor. The committee shall appoint the legislative auditor and set his salary. The legislative auditor shall hold a degree from an accredited college or university with a major in accounting or an allied field and shall have at least two (2) years experience in the field of governmental accounting and auditing.

History: En. Sec. 5, Ch. 249, L. 1967.

79-2306. Appointment of employees. The legislative auditor may appoint whatever employees are necessary to carry out the provisions of this act, within the limitations of legislative appropriations.

History: En. Sec. 6, Ch. 249, L. 1967.

79-2307. Term and removal of legislative auditor. The legislative auditor is solely responsible to the legislative assembly. He shall hold office for a term of two (2) years beginning with July 1 of each odd-numbered year. The committee may remove him for misfeasance, malfeasance or nonfeasance in office at any time after notice and hearing.

History: En. Sec. 7, Ch. 249, L. 1967.

79-2308. Duties of legislative auditor. The legislative auditor shall

(1) Audit the financial affairs and transactions of every state agency at least once each biennium.

(2) Make a full, complete and written report of each audit. A copy of each report shall be furnished to the state controller, to the state agency which is audited, to each member of the committee, and to the legislative council.

(3) Report immediately in writing to the attorney general any apparent violation of penal statutes disclosed by the audit of a state agency, and furnish the attorney general all information in his possession relative to the violation.

(4) Report immediately in writing to the governor any instances of misfeasance, malfeasance or nonfeasance by a state officer or employee disclosed by the audit of a state agency.

(5) Report immediately to the surety upon the bond of any official or employee when an audit discloses a shortage in the accounts of the official or employee. The failure to notify the surety does not release the surety from any obligation under the bond.

(6) Report to the legislative assembly during the first week of each regular session. Each biennial report shall contain, among other things, copies of, or summaries of audit reports on state agencies and any recommendations relating to such reports.

History: En. Sec. 8, Ch. 249, L. 1967.

79-2309. Audit standards and objectives. The objectives of audits of state agencies conducted by the legislative auditor are to determine whether

(1) The agency is carrying out only those activities or programs authorized by the legislative assembly and is conducting them efficiently and effectively.

(2) Expenditures are made only in furtherance of authorized activities and in accordance with the requirements of applicable laws and regulations.

(3) The agency collects and accounts properly for all revenues and receipts arising from its activities.

(4) The assets of the agency or in its custody are adequately safeguarded and controlled and utilized in an efficient manner.

(5) Reports and financial statements by the agency to the governor, the legislative assembly, and central control agencies disclose fully the nature and scope of the activities conducted, and provide a proper basis for evaluating the agency's operations.

History: En. Sec. 9, Ch. 249, L. 1967.

79-2310. Recommendations of legislative auditor. The reports of the legislative auditor may include comments, recommendations and suggestions, but he shall have no power to enforce them nor shall he otherwise influence or direct executive or legislative action.

History: En. Sec. 10, Ch. 249, L. 1967.

79-2311. Legislative auditor to assist legislative assembly during sessions. During sessions of the legislative assembly, the legislative auditor and his staff, when requested, shall assist the legislative assembly, its com-

mittees, and its members by gathering and analyzing information relating to the fiscal affairs of state government.

History: En. Sec. 11, Ch. 249, L. 1967.

79-2312. Information from state agencies. All state agencies shall aid and assist the legislative auditor in the auditing of books, accounts and records. The legislative auditor may examine at any time the books, accounts and records, confidential or otherwise, of a state agency; however, this shall not be construed as authorizing the publication of information which the law prohibits publishing.

History: En. Sec. 12, Ch. 249, L. 1967.

79-2313. Audit charge against earmarked money. (1) As used in this section

(a) "Earmarked money" means a fund, account or any other money, other than general fund money, but excluding trust or agency money, that is earmarked for the support of a particular agency, program or service.

(b) "Audit charge" means the actual cost of the audit of a state agency by the legislative auditor as computed by the legislative auditor, but not more than seventy-five dollars ($75.00) per day.

(2) At the request of the legislative auditor, a state agency shall transfer to the general fund from earmarked moneys under its control an amount equal to the audit charge multiplied by the percentage that the annual expenditure of earmarked moneys is of the total annual expenditure of the state agency.

History: En. Sec. 13, Ch. 249, L. 1967.

TITLE 80—STATE INSTITUTIONS

Chapter
1. Montana state school for the deaf and blind, 80-105, 80-107.
14. State department of institutions, 80-1403 to 80-1405, 80-1410 to 80-1413.
16. Payments for the care of residents of institutions, 80-1601.
17. Galen state hospital, 80-1701 to 80-1704.
19. State prison, 80-1905.
22. State vocational school for girls and state industrial school, 80-2202 to 80-2206, 80-2209 to 80-2212.
23. Boulder river school and hospital, 80-2301 to 80-2312.
24. Division of mental hygiene—state hospital and mental health centers, 80-2401, 80-2401.1, 80-2402 to 80-2411.

CHAPTER 1—MONTANA STATE SCHOOL FOR THE DEAF AND BLIND

Section
80-105. Eligibility of children for admittance.
80-107. Duration of attendance at school.

80-105. Eligibility of children for admittance. On proper application being made therefor, deaf and blind children who are not more than eighteen (18) years of age residing within the state of Montana, and nonresident children, who are not more than eighteen (18) years of age, who are not mentally deficient, dangerously diseased in body, or of confirmed immorality, or incapacitated for useful instruction by reason of physical disability, may be admitted to such school.

History: En. Sec. 4, Ch. 182, L. 1943; amd. Sec. 1, Ch. 282, L. 1967.

Amendments

The 1967 amendment deleted "who have reached the age of five (5) and" after "blind children"; and substituted "who are not more than eighteen (18) years of age" for "between such ages" after "nonresident children."

80-107. Duration of attendance at school. Every child admitted to such school shall be entitled to attend such school until reaching the age of twenty-one (21) years unless the board of education and superintendent determine that attendance at the school will not benefit the child; provided, that nothing in this section shall be construed so as to prevent the suspension or expulsion of any child at any time for insubordination or other cause deemed good and sufficient by the board of education and superintendent.

History: En. Sec. 6, Ch. 182, L. 1943; amd. Sec. 2, Ch. 282, L. 1967.

Amendments

The 1967 amendment deleted "for a period of ten (10) years, or" after "such school" and substituted "unless the board of education and superintendent determine that attendance at the school will not benefit the child" after "twenty-one (21) years" for "if such age be reached before the expiration of such ten (10) year period. Any child who has attended the school for a period of ten (10) years, but has not yet reached the age of twenty-one (21) years, with the consent and approval of the superintendent of the school, may petition the state board of education to remain in such school for an additional period of two (2) years, or until arriving at the age of twenty-one (21) years if such child will arrive at such age before the expiration of such additional two (2) year period. The board shall consider the petition upon the scholastic record and the record as to obedience and morality of such child while in such school and if it finds it proper to do so may grant the same."

CHAPTER 14—STATE DEPARTMENT OF INSTITUTIONS

Section
80-1403. Institutions in department.
80-1404. Director of department—appointment, powers and duties.
80-1405. Powers and duties of board.
80-1410. Establishment of juvenile correctional facilities.
80-1411. Control and management of juvenile correctional centers—rules—special programs.
80-1412. Youth forest camp—work program.
80-1413. Participation by governing boards in research programs.

80-1403. Institutions in department. The following institutions are in the state department of institutions:

(1) Galen state hospital
(2) Montana veterans' home
(3) State prison
(4) Montana children's center
(5) Mountain View school
(6) Pine Hills school
(7) Boulder river school and hospital
(8) Warm Springs state hospital
(9) Montana center for the aged
(10) Swan river youth forest camp
(11) Such other institutions or departments established or to be established in the future having the function or purpose of providing care and services for juvenile delinquents including but not limited to youth forest camps and juvenile reception and evaluation centers.

No state institution may be moved, discontinued or abandoned without prior consent of the legislative assembly.

History: En. Sec. 3, Ch. 199, L. 1965; amd. Sec. 1, Ch. 320, L. 1967.

Amendments

The 1967 amendment changed the names of the institutions listed in clauses (1), (5), (6), (7) and (8); and added clauses (10) and (11).

80-1404. Director of department—appointment, powers and duties. The board shall appoint the director, who is the chief executive and administrative officer of the department. The director shall be a person qualified by experience, training and professional competence in institutional rehabilitation and treatment management. The function of the director, in addition to other duties assigned to him by law, is to execute the policies established by the board. The director shall appoint employees for the central office of the department.

History: En. Sec. 4, Ch. 199, L. 1965; amd. Sec. 2, Ch. 320, L. 1967.

Amendments

The 1967 amendment deleted a sentence at the end of the section, which read "The board shall appoint and after hearing held discharge the warden or superintendent of institutions."

80-1405. Powers and duties of board. The board shall:

(1) to (7). * * * [Same as parent volume.]

(8) To choose, appoint and discharge the warden or superintendent of each of the institutions or facilities in the department and, unless the

legislative assembly has specified the salary of the warden or superintendent of the institution or facility in the appropriation to the department of institutions, fix their compensation after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry.

History: En. Sec. 5, Ch. 199, L. 1965; amd. Sec. 3, Ch. 320, L. 1967.

Amendments

The 1967 amendment added subparagraph (8).

80-1410. Establishment of juvenile correctional facilities. The state department of institutions within the annual or biannual budgetary appropriation therefor may establish, maintain and operate facilities as may be needed properly to diagnose, care for, train, educate, and rehabilitate children in need of these services, and ten (10) years of age or older and under twenty-one (21), including but not limited to, the Mountain View school, the Pine Hills school and the youth forest camp.

History: En. Sec. 8, Ch. 320, L. 1967.

Title of Act

An act relating to the powers and duties of the board of institutions and to certain institutions under its management and control; providing the board's power to fix salaries of superintendents of institutions with the approval of the board of examiners if the salaries of superintendents or wardens are not specified by the legislative assembly in the appropriation to the department of institutions; changing the name of certain institutions; generally revising and amending the laws relating to juvenile correctional institutions; providing for the control and management of juvenile correctional facilities including juvenile correctional facilities hereafter authorized by the legislature; providing for transferring of prisoners sent to the state prison who are under the age of twenty-one (21) to juvenile correctional facilities; amending sections 80-1403, 80-1404, 80-1405, 80-1601, 80-1701, 80-1702, 80-1703, 80-2202, 80-2203, 80-2204, 80-2205, 80-2206, 80-2209, 80-2210, 80-2211, 80-2212, 80-2301, 80-2302, 80-2303, 80-2304, 80-2305, 80-2306, 80-2307, 80-2308, 80-2309, 80-2401, 80-2402, 80-2404, repealing 80-2201, 80-2208, R. C. M. 1947.

80-1411. Control and management of juvenile correctional centers—rules—special programs. All of the facilities provided for in section 8 [80-1410] of this act or which may hereafter be established by the department pursuant to the authority granted by section 8 [80-1410] of this act shall exercise their functions under the supervision, direction, control and general management of the department. Except where otherwise provided by law, the department by rule and regulations shall establish standards of care, policies of admission, transfers, discharge and aftercare supervision and from time to time it shall order such changes in the policies, conduct or management of the facilities as seems desirable in order to provide adequate care for children and adequate service to the courts. The department shall develop special programs within each facility which are adaptable to the particular needs of its operation.

History: En. Sec. 9, Ch. 320, L. 1967.

80-1412. Youth forest camp—work program. In the case of a youth forest camp, a work program shall be provided by the Montana state forester, and shall be carried out with co-operation between the state forester and the camp superintendent.

History: En. Sec. 10, Ch. 320, L. 1967.

80-1413. Participation by governing boards in research programs. The duly constituted and governing board of any penal, corrective, or custodial institution of the state of Montana is hereby enabled and authorized to participate in and co-operate with programs of research and development being conducted and carried on by any units of the Montana university system, by any of the other educational institutions of the state of Montana or by any foundation or agency thereof, in the fields of science, health, education and natural resources. Such programs may include the voluntary participation of the inmates of the institution in testing and experimental work conducted as a part thereof. Any funds received from the authorized programs may be shared with the participating inmates or otherwise held and used for the welfare and rehabilitation thereof, and shall not become a part of the regular budgeted operation of the institution.

History: En. Sec. 1, Ch. 98, L. 1967.

Title of Act

An act authorizing voluntary participation in programs of research and development in the fields of science, health, education and natural resources by the governing boards of state penal, corrective or custodial institutions, and by the inmates thereof for use in welfare and rehabilitation work within said institutions.

Cross-References

Research and development programs of educational units, sec. 75-313.

CHAPTER 16—PAYMENTS FOR THE CARE OF RESIDENTS OF INSTITUTIONS

Section
80-1601. Institutions subject to per diem charge.

80-1601. Institutions subject to per diem charge. The state department of institutions shall collect and process per diem payments for the care of residents in the following institutions:

(1) Montana children's center

(2) Warm Springs state hospital

(3) Boulder river school and hospital

(4) Galen state hospital

(5) Montana veterans' home

(6) Montana center for the aged.

History: En. Sec. 13, Ch. 199, L. 1965; amd. Sec. 4, Ch. 320, L. 1967.

Amendments

The 1967 amendment, in subparagraph (2), substituted "Warm Springs state hospital" for "State Hospital"; in subparagraph (3), substituted "Boulder river school and hospital" for "State Training School and Hospital"; and, in subparagraph (4), substituted "Galen state hospital" for "State Pulmonary Disease Hospital."

CHAPTER 17—GALEN STATE HOSPITAL

Section
80-1701. Location and primary function of hospital—secondary function.
80-1702. Qualifications of superintendent.
80-1703. Transfer of patient to mental institution—notice to relatives.
80-1704. Juvenile reception and evaluation center—committal—duties—transportation to and from.

80-1701. Location and primary function of hospital—secondary function. (1) The institution located at Galen is the Galen state hospital and, as its primary function, provides:

(a) Treatment of tuberculosis and silicosis (commonly called miner's consumption).

(2) If there are space and funds available, the hospital shall also treat the following:

(a) Emphysema, bronchiectasis, carcinoma of the lung and other diseases of the lung pertaining to pulmonary disorders.

(b) Geriatric and senile patients afflicted with pulmonary disorders and patients who are residents of another state institution.

History: En. Sec. 17, Ch. 199, L. 1965; amd. Sec. 5, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Galen state hospital" for "State Pulmonary Disease Hospital" in subsection (1).

80-1702. Qualifications of superintendent. The superintendent of Galen state hospital shall be a physician legally qualified to practice medicine in Montana with at least (4) years in the practice of his profession, including at least one (1) year's experience in a general hospital.

History: En. Sec. 18, Ch. 199, L. 1965; amd. Sec. 6, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Galen state hospital" for "state pulmonary disease hospital."

80-1703. Transfer of patient to mental institution—notice to relatives. A mentally retarded or mentally ill person residing at Galen state hospital may be transferred to the Warm Springs state hospital, the Montana center for the aged, or the Boulder river school and hospital with the approval of the department of institutions if the department determines that the transfer will be in the best interests of the patient. Unless a medical or psychiatric emergency exists fifteen (15) days prior to the transfer the department shall send notice of the proposed transfer to the patient's parent, guardian, or spouse, or if none is known, his nearest relative or friend. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 19, Ch. 199, L. 1965; amd. Sec. 7, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Galen state hospital" for "state pulmonary disease hospital"; substituted "Warm Springs state hospital" for "state hospital"; substituted "Boulder river school and hospital" for "state training school and hospital"; and made a minor change in punctuation.

80-1704. Juvenile reception and evaluation center—committal—duties—transportation to and from. The reception and evaluation center for children at the Galen state hospital as established by law shall be subject to the rules and regulations adopted and promulgated by the state department of institutions and shall accept from the juvenile courts the temporary custody of children then being held on a charge, under which the child could be adjudged a delinquent. For the period during which children are in the custody of the reception and evaluation center for children, it shall provide for them a residential program of care and study. The

reception and evaluation center for children may not in any event detain or hold a child in custody for a period of time greater than forty-five (45) days. To assist the juvenile courts in making a decision regarding the child's disposition the reception and evaluation center for children will forward recommendations to the court to include, but not limited to, a psychiatric social summary; psychological evaluation, medical report; diagnostic school report; and a psychiatric report prepared by a consulting psychiatrist, for those for whom this kind of evaluation is considered necessary. Transportation to and from the reception and evaluation center shall be provided by the county of such child's residence.

History: En. Sec. 20, Ch. 320, L. 1967.

Repealing Clause

Section 21 of Ch. 320, Laws 1967 read "Sections 80-2201 and 80-2208, R. C. M. 1947, are hereby repealed."

Cross-References

Juvenile court committal of delinquents, sec. 10-611.

CHAPTER 19—STATE PRISON

Section
80-1905. Good time allowance—forfeiture—probationers and parolees—application of prior law.

80-1905. Good time allowance—forfeiture—probationers and parolees—application of prior law. (1) The state department of institutions shall adopt rules and regulations providing for the granting of good time allowance for inmates employed in any prison work or activity. The good time allowance shall operate as a credit on his sentence as imposed by the court, conditioned upon the inmate's good behavior and compliance with the rules and regulations made by the department or the warden. The rules adopted by the department may not grant good time allowance to exceed:

(a) to (c). * * * [Same as parent volume.]

(d) thirteen (13) days per month for those inmates enrolled in school inside the walls who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole.

(e) ten (10) days for each pint of blood donated by an inmate.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 28, Ch. 199, L. 1965; amd. Sec. 1, Ch. 219, L. 1967.

Amendments

The 1967 amendment added subdivisions (d) and (e) in subsection (1).

DECISIONS UNDER FORMER LAW

Forfeiture of Good Time Allowance

A prisoner who, by virtue of former section 80-740.1, was earning good time under former section 80-739, the prior law, was subject to the provisions of former section 80-741, the forfeiture statute, which existed under the old law. Petition of Brandt, — M —, 410 P 2d 708.

CHAPTER 22—STATE VOCATIONAL SCHOOL FOR GIRLS AND STATE INDUSTRIAL SCHOOL

Section
80-2202. Superintendents to manage facilities.
80-2203. Curricula at facilities.

80-2204. Maximum age of commitment.
80-2205. Medical examination before commitment—records required to accompany child committed.
80-2206. Commitment expenses—arrangement for transportation.
80-2209. Transfer of child to any other facility or institution—notice to parents or guardian and committing court.
80-2210. Commutation of sentence to state prison—commitment of child to department of institutions—revocation of commutation—transfer of child to a juvenile facility.
80-2211. Child leaving juvenile facility without permission—apprehension and return.
80-2212. Aiding resident in leaving school—penalty.

80-2201. Repealed.

Repeal

This section (Sec. 45, Ch. 199, L. 1965), relating to the location and functions of vocational and industrial schools, was repealed by Sec. 21, Ch. 320, Laws 1967 and Sec. 34, Ch. 320, Laws 1967.

80-2202. Superintendents to manage facilities. Each facility provided for herein shall be under the immediate management and control of a superintendent.

History: En. Sec. 46, Ch. 199, L. 1965; amd. Sec. 11, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Each facility provided for herein" for "The state vocational school for girls and the state industrial school"; and made a minor change in phraseology.

80-2203. Curricula at facilities. The academic and vocational curriculum in facilities containing academic and vocational training shall include such academic and vocational subjects as are taught in the public schools of the state, and shall conform to the standards set by the state board of education.

History: En. Sec. 47, Ch. 199, L. 1965; amd. Sec. 12, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "The academic and vocational curriculum in facilities containing academic and vocational training" for "The curricula of the state vocational school for girls and the state industrial school."

80-2204. Maximum age of commitment. No child shall be committed to the Mountain View school, Pine Hills school or the department of institutions who has attained the age of eighteen (18).

History: En. Sec. 48, Ch. 199, L. 1965; amd. Sec. 13, Ch. 320, L. 1967.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

80-2205. Medical examination before commitment—records required to accompany child committed. Before a child is committed to the Mountain View school or the Pine Hills school or the department of institutions he shall be examined by a licensed physician. A child committed to one of the schools or the department of institutions shall be accompanied by the order of commitment, a medical examination report, an adequate social history, and any school records.

History: En. Sec. 49, Ch. 199, L. 1965; amd. Sec. 14, Ch. 320, L. 1967.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

80-2206. Commitment expenses—arrangement for transportation. The expenses of committing a child to the Mountain View school or the Pine Hills school or to the department of institutions and transporting such child to the Mountain View school or the Pine Hills school or the place designated by the department for it to receive custody and the expense of returning such child to the county of residence shall be borne by the county of residence. The district judge shall arrange for transportation of the child to the place where the department of institutions has directed that it will receive custody of such child.

History: En. Sec. 50, Ch. 199, L. 1965; amd. Sec. 15, Ch. 320, L. 1967.

Amendments

The 1967 amendment completely rewrote this section. For previous text, see parent volume.

80-2208. Repealed.

Repeal

This section (Sec. 52, Ch. 199, L. 1965), relating to the placement or discharge of residents of vocational and industrial schools, was repealed by Sec. 21, Ch. 320, Laws 1967 and Sec. 34, Ch. 320, Laws 1967.

80-2209. Transfer of child to any other facility or institution—notice to parents or guardian and committing court. (1) The department of institutions upon recommendation of the superintendent of a facility may transfer a child resident in one of its juvenile facilities to any other facility or institution under the jurisdiction and control of the department.

(2) In the case of transfers of children in juvenile facilities to Warm Springs state hospital or Boulder river school and hospital and unless medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the department of institutions shall send notice of the proposed transfer to the parents or legal guardian of the child and to the district court who committed the child. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 53, Ch. 199, L. 1965; amd. Sec. 16, Ch. 320, L. 1967.

Amendments

The 1967 amendment completely rewrote this section. For previous text, see parent volume.

80-2210. Commutation of sentence to state prison—commitment of child to department of institutions—revocation of commutation—transfer of child to a juvenile facility. (1) Upon the application of a child under the age of twenty-one (21) years who has been sentenced to the state prison, or upon the application of his parents or guardians, the governor may, after consulting with the department of institutions and with the approval of the board of pardons, commute the sentence by committing such child to the department of institutions during his minority or until sooner placed or discharged.

(2) If such child's behavior after being committed to the department of institutions indicates that he is not a proper person to reside at one of the department's juvenile facilities, the governor after consulting with the department of institutions with the approval of the board of pardons,

may revoke the commutation and return him to the state prison to serve out his unexpired term, and the time spent by him at one of the department juvenile facilities or while a refugee from one of the department juvenile facilities, shall not be considered as a part of his original sentence.

Upon recommendation of the warden and with the approval of the department of institutions a child under the age of twenty-one (21) years, who has been sentenced to the state prison, may be transferred to any juvenile facility under the jurisdiction and control of the department. Upon such transfer such child shall be under the supervision and control of the facility to which he is transferred.

If such child's behavior after transfer to such juvenile facility indicated he might be released on parole or his sentence commuted and he be discharged from custody, the superintendent of such facility, with the approval of the department, may make an appropriate recommendation to the state board of pardons and the governor who may, in their discretion, parole such child or commute his sentence.

If such child's behavior after transfer to a juvenile facility indicates he is not a proper person to reside in such facility, upon recommendation of the superintendent, and with the approval of the department, such child shall be returned to the state prison to serve out his unexpired term.

History: En. Sec. 54, Ch. 199, L. 1965; amd. Sec. 17, Ch. 320, L. 1967.

Amendments

The 1967 amendment, in subsection (1), substituted "twenty-one (21)" for "eighteen (18)"; substituted "department of institutions" for "state vocational school for girls or state industrial school" before "during his minority"; in subsection (2), substituted "committed to the department of institutions" for "sent to one of such schools" before "indicates"; substituted "one of the department's juvenile facilities" for "one of the schools" after "reside at"; substituted "department juvenile facilities or while a refugee from one of the department juvenile facilities" for "schools, or while a refugee from one of the schools" before "shall not be considered"; and added the second, third and fourth paragraphs in subsection (2).

80-2211. Child leaving juvenile facility without permission—apprehension and return. A child who has left a juvenile facility of the department without permission may be apprehended and returned by any citizen.

History: En. Sec. 55, Ch. 199, L. 1965; amd. Sec. 18, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "a juvenile facility of the department" for "the state vocational school for girls or state industrial school."

80-2212. Aiding resident in leaving school—penalty. A person who permits or assists a resident of any juvenile facility to leave a facility without permission, or who furnished or attempts to furnish to such a resident a tool, weapon, or other article with the intent of aiding him to leave without permission, or who harbors or conceals a resident who has left without permission, shall on conviction be punished by imprisonment for a term of not less than six (6) months or more than two (2) years, or by a fine not exceeding one thousand dollars ($1,000), or by both such fine and imprisonment.

History: En. Sec. 56, Ch. 199, L. 1965; amd. Sec. 19, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "any juvenile facility to leave a facility" for "the state vocational school for girls or the state industrial school to leave the school" after "a resident of."

CHAPTER 23—BOULDER RIVER SCHOOL AND HOSPITAL

Section
80-2301. Location and function of school.
80-2302. Superintendent to manage school—school in division of mental retardation.
80-2303. Residence required for admittance to school.
80-2304. Application of parent or guardian for admission of mentally retarded person—supporting affidavits—social summary.
80-2305. Applications heard by district court—hearing—medical and psychological examination—social summary—order approving application.
80-2306. Admission to school to await accommodations—records to accompany person admitted—transportation costs.
80-2307. Temporary admissions to school.
80-2308. Transfer of patient to hospital—notice to parents or guardian and committing court.
80-2309. Discharge from school.
80-2310. Mental retardation center at Glendive—services provided.
80-2311. Capacity of mental retardation center.
80-2312. Supervision of Glendive center—transfers to training school and hospital.

80-2301. Location and function of school. (1) The institution located at Boulder is the "Boulder river school and hospital." The primary function of the school is the care, treatment, training and education of mentally retarded persons.

(2) As used in this act "mental retardation" is a state of subnormal development of the human organism which results in the mental incapability of the person affected to adapt himself to the daily demands of his social environment.

History: En. Sec. 58, Ch. 199, L. 1965; amd. Sec. 22, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "State Training School and Hospital" in subsection (1).

80-2302. Superintendent to manage school—school in division of mental retardation. The superintendent of the Boulder river school and hospital is responsible for the immediate management and control of the school. The school is in the division of mental retardation of the department of institutions.

History: En. Sec. 59, Ch. 199, L. 1965; amd. Sec. 23, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital."

80-2303. Residence required for admittance to school. To be eligible for admittance to the Boulder river school and hospital, a mentally retarded person or his parent or guardian shall have been a resident of the state for at least one (1) year.

History: En. Sec. 60, Ch. 199, L. 1965; amd. Sec. 24, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital."

80-2304. Application of parent or guardian for admission of mentally retarded person—supporting affidavits—social summary. If an application for admission of a mentally retarded person to the Boulder river school and hospital is made by the guardian or parent it shall be filed with the department of institutions, in a form prescribed by the department and available at the county department of public welfare office. The application shall be supported by the affidavit of two (2) physicians or one (1) psychologist acceptable to the department of institutions and one (1) physician certifying that the person whose admission is sought is mentally retarded. The county department of public welfare, where the retarded person resides, shall prepare a social summary on the retarded person for the use of the Boulder river school and hospital.

History: En. Sec. 61, Ch. 199, L. 1965; amd. Sec. 25, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital" wherever it appears in this section.

80-2305. Applications heard by district court—hearing—medical and psychological examination—social summary—order approving application. If the application for admission is made by someone other than the parent or legal guardian of a mentally retarded person, it shall be filed with the clerk of the district court. The application shall be in a form prescribed by the state department of institutions. The judge shall set the time and place for hearing the application, and the clerk shall notify the parents or guardians, and other interested persons. The court shall name two (2) physicians or one (1) psychologist acceptable to the department of institutions, and one (1) physician, to examine the person whose admission is sought. The county department of public welfare shall prepare a social summary of the person for the use of the court. If the court concludes from the examination and other information obtained at the hearing that the person whose admission is sought, is a proper person for admission to the Boulder river school and hospital, the court shall issue an order approving the application.

History: En. Sec. 62, Ch. 199, L. 1965; amd. Sec. 26, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital" in the sixth sentence.

80-2306. Admission to school to await accommodations—records to accompany person admitted—transportation costs. A person may not be taken to the Boulder river school and hospital until the department of institutions has ascertained whether or not there is room at the school to accommodate the person. If there is not room, the application shall be filed with the department, which shall grant admission when room becomes available. When there is room the person shall be sent to the school with a copy of the court order, if any, the application, and the social summary prepared by the county department of public welfare. The costs of transportation to the school shall be paid by the county where the person resides.

History: En. Sec. 63, Ch. 199, L. 1965; amd. Sec. 27, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital" in the first sentence.

80-2307. Temporary admissions to school. In order to utilize facilities more efficiently during the temporary or seasonal decreases in population, and in order to extend the benefits of training and treatment programs offered by the Boulder river school and hospital to mentally retarded persons whose extended commitment is not sought, the department of institutions may admit a mentally retarded person to the school for a period not exceeding sixty (60) days on the application of the person's parent or guardian.

History: En. Sec. 64, Ch. 199, L. 1965; amd. Sec. 28, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital."

80-2308. Transfer of patient to hospital—notice to parents or guardian and committing court. With the approval of the department of public institutions, a patient of the Boulder river school and hospital may be transferred to the Warm Springs state hospital or the Galen state hospital. Unless a medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the department shall send notice of the proposed transfer to the parents or legal guardian of the person, and to the district court, if any, which committed the person. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 65, Ch. 199, L. 1965; amd. Sec. 29, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital" after "patient of the"; and substituted "Warm Springs state hospital or the Galen state hospital" for "state hospital of (or) the state pulmonary disease hospital" after "transferred to the" in the first sentence.

80-2309. Discharge from school. (1) With the approval of the department of institutions, the superintendent may discharge a person admitted to the Boulder river school and hospital.

(2). * * * [Same as parent volume.]

History: En. Sec. 66, Ch. 199, L. 1965; amd. Sec. 30, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital" at the end of subsection (1).

80-2310. Mental retardation center at Glendive—services provided. The board of institutions shall establish, construct, equip, maintain and provide services for a mental retardation center at Glendive for residential and outpatient care of mentally retarded persons residing in Montana. The center shall be planned, constructed, equipped and shall provide services similar to those provided at the state training school and hospital at

Boulder; provided, however, that the center shall not be a duplication of the state training school and hospital but shall be an extension thereof.

History: En. Sec. 3, Ch. 255, L. 1967.

80-2311. Capacity of mental retardation center. The center to be constructed under the provisions of this act shall not exceed the requirements of two hundred (200) bed units.

History: En. Sec. 4, Ch. 255, L. 1967.

80-2312. Supervision of Glendive center—transfers to training school and hospital. The board of institutions shall plan, supervise, and provide rules and regulations for, but not limited to, the construction, equipment, maintenance, staff requirements and services to be provided at the center. The board shall provide for temporary transfers from the Glendive center to the state training school and hospital at Boulder for special medical, psychological, surgical or other services on a temporary basis.

History: En. Sec. 5, Ch. 255, L. 1967.

CHAPTER 24—DIVISION OF MENTAL HYGIENE—STATE HOSPITAL AND MENTAL HEALTH CENTERS

Section

80-2401. Location and function of hospital—hospital in division of mental hygiene.
80-2401.1. Definition of terms.
80-2402. Superintendent is supervisor of division—qualifications of superintendent.
80-2403. Functions of division of mental hygiene.
80-2404. Alcoholism services center.
80-2405. Department of institutions to control public mental health programs—establishment of standards, qualifications and compensation—compliance with federal guidelines.
80-2406. Clinics and community services.
80-2407. Mental health regions.
80-2408. Continuation of services.
80-2409. Availability of services.
80-2410. Mental health centers established—staffing.
80-2411. Supervision of mental health centers.

80-2401. Location and function of hospital—hospital in division of mental hygiene. The institution located at Warm Springs is the "Warm Springs state hospital." The only function of the state hospital is the care and treatment of mentally ill persons and alcoholics. The Warm Springs state hospital is in the division of mental hygiene of the department of institutions.

History: En. Sec. 67, Ch. 199, L. 1965; amd. Sec. 31, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Warm Springs state hospital" for "state hospital" throughout this section.

80-2401.1. Definition of terms. As used in this act, unless the context clearly indicates otherwise:

(1) Public mental health facility is any public service or group of services operating under the guidelines of the division of mental hygiene of the department of institutions offering mental health care on an inpatient or outpatient basis to the mentally ill.

(2) Community comprehensive mental health center is a facility not necessarily encompassed within one building offering at least the following five (5) basic mental health services to the public:

(a) Twenty-four (24) hour inpatient care.

(b) Part-time hospitalization.

(c) Outpatient service.

(d) Emergency service.

(e) Consultation and education in mental health.

(3) Mental health clinic is an outpatient facility offering mental health care to the public.

History: En. Sec. 1, Ch. 246, L. 1967.

Title of Act

An act expanding duties and services of the division of mental hygiene of the state board of public institutions by establishing and conducting mental health clinics and community comprehensive mental health centers; creating regional mental health boards; providing for the organization thereof; defining the duties of regional mental health boards; authorizing the participation of the division of mental hygiene of the state board of public institutions in contractual or cooperative arrangements with regional mental health boards and others; providing the division of mental hygiene and the regional mental health boards the authority to receive gifts, grants, donations, and any other form of support and enabling counties participating in regional mental health programs to use tax moneys to finance the programs of prevention, diagnosis and treatment of mental illness; giving the division of mental hygiene of the state board of public institutions general supervisory power and control over all public mental health programs in the state of Montana; amending section 80-2403 of the Revised Codes of Montana, 1947, enacted as section 69, chapter 199, Laws of 1965; and repealing all other acts and parts of acts in conflict herewith.

80-2402. Superintendent is supervisor of division—qualifications of superintendent. The superintendent of the Warm Springs state hospital is the supervisor of the division of mental hygiene. The superintendent shall be a licensed physician who has fulfilled the residency requirements of the American Board of Psychiatry and Neurology in the speciality of psychiatry.

History: En. Sec. 68, Ch. 199, L. 1965; amd. Sec. 32, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Warm Springs state hospital" for "state hospital" in the first sentence.

80-2403. Functions of division of mental hygiene. The division of mental hygiene of the department of institutions shall:

(1) Take cognizance of matters affecting the mental health of the citizens of the state.

(2) Initiate preventive mental hygiene activities of the state's mental health program, including but not limited to the implementation of mental health care and treatment, prevention and research as can best be accomplished by community centered services. Such means shall be utilized by the division of mental hygiene as will initiate and operate these services in co-operation with local agencies as established under provisions of sections 4 and 5 [80-2406 and 80-2407] below.

(3) Make scientific and medical research investigations relative to the incidence, cause, prevention and care of mental illness.

(4) Collect and disseminate information relating to mental hygiene.

(5) Prepare a comprehensive plan for the development of public mental health services in the state. Such public mental health services shall include, but not be limited to, community comprehensive mental health centers, mental hygiene clinics, traveling service units, consultative and educational services.

(6) Provide by regulation for the examination of persons, who shall apply for examination or who shall be admitted either as inpatients or outpatients into the state hospital or other public mental health facility under the supervision and control of the division of mental hygiene, for the purpose of diagnosing and prescribing treatment of mental illness.

(7) Receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms or corporations, grants of money, receipts from fees, gifts, supplies, materials, and contributions, for the development of mental health services within the state.

History: En. Sec. 69, Ch. 199, L. 1965; amd. Sec. 2, Ch. 246, L. 1967.

Amendments

The 1967 amendment added "including but not limited to * * * below" after "mental health program" at the end of subparagraph (2); in subparagraph (3), inserted "research" after "medical"; substituted "a comprehensive plan" for "plans" after "Prepare" at the beginning of subparagraph (5); inserted "public" before "mental" in the first sentence and added the second sentence to subparagraph (5); rewrote subparagraph (6), which formerly read, "Examine persons received into the state hospital and other persons who apply for examination, for the purpose of diagnosing and prescribing treatment of mental illness"; deleted old subparagraph (7), which read, "Establish and conduct clinics in cities and towns of the state for the diagnosis and treatment of mental illness"; redesignated old subparagraph (8) as new subparagraph (7); and in new subparagraph (7), inserted "government of the" before "United States" near the beginning of the subparagraph; inserted "persons or groups of persons, associations, firms or corporations" after "agencies"; inserted "receipts from fees, gifts, supplies, materials and contributions" after "grants of money"; substituted "health" for "hygiene" before "services"; and deleted "and use such moneys in its operation" at the end of the subparagraph.

80-2404. Alcoholism services center. (1) There is an alcoholism services center at the Warm Springs state hospital. The admittance and discharge procedures for alcoholics are the same as for mentally ill persons.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 70, Ch. 199, L. 1965; amd. Sec. 33, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Warm Springs state hospital" for "state hospital" at the end of the first sentence of subsection (1).

Repealing Clause

Section 34 of Ch. 320, Laws 1967 read "Section 80-2201, R. C. M. 1947, and section 80-2208, R. C. M. 1947, are hereby repealed."

Effective Date

Section 35 of Ch. 320, Laws 1967 read "The institutional name changes specified in this act shall be effective January 1, 1968."

80-2405. Department of institutions to control public mental health programs—establishment of standards, qualifications and compensation—compliance with federal guidelines. The department of institutions, through the division of mental hygiene, shall control the public mental health programs which receive any state assistance by establishing and promulgating rules, regulations, and standards for providing mental health facilities

and services. It shall set minimum standards for programs, establish appropriate qualifications and compensation scales and personnel policies for persons employed in such programs. All public mental health facilities and services shall, subject to the approval of the department of institutions, comply with existing federal guidelines and with requirements which will enable them to qualify for available matching funds.

History: En. Sec. 3, Ch. 246, L. 1967.

80-2406. Clinics and community services. (1) The division of mental hygiene may establish and conduct community comprehensive mental health centers, mental health clinics and other facilities in cities, towns and areas of the state for the purpose of aiding in the prevention, diagnosis and treatment of mental illness. Such centers, clinics or other facilities may be provided directly by state agencies or indirectly through contract or co-operative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons or hospitals, under rules and regulations promulgated and established by the division of mental hygiene.

(2) State funds specifically appropriated for regional mental health service programs shall not exceed fifty per cent (50%) of the total expenditures of the programs.

History: En. Sec. 4, Ch. 246, L. 1967.

80-2407. Mental health regions. (1) Mental health regions shall be established in the state mental health plan and shall conform to the mental health regions as established in the state mental health construction plan promulgated by the state board of health under sections 82-3314 to 82-3318, R.C.M. 1947, and the federal Community Mental Health Centers Act.

(2) Upon the establishment of the mental health regions, the county commissioners in each of the various counties in a region shall designate a person from their respective county to serve as a representative of the county on a regional mental health board, which board shall be established under guidelines adopted by the division of mental hygiene. All appointments to said board shall be for terms of two (2) years.

(3) The duties of any organized regional mental health board shall include:

(a) Annual review and evaluation of mental health needs and services within said region.

(b) Submission to the division of mental hygiene and to each of the participating counties within the region of plans and budget proposals to provide and support mental health services within the region.

(c) Establishment of a recommended proportionate level of financial participation by each of the counties involved in the provision of mental health service within the limits of this section.

(d) Receipt and administration of such moneys and other support as are made available for the purpose of providing mental health services by the participating agencies, including grants from the United States

government and other agencies, receipts for established fees for services rendered, tax moneys, gifts, donations and other support.

All funds so received by the board shall be used to carry out the purposes of this act.

(e) Supervision by appropriate administrative staff personnel of the operation of community mental health services in the region.

(f) Keeping all records of the board and making such reports as may be required.

(4) Regional mental health board members shall be reimbursed from funds of the board for actual and necessary expense incurred in attending meetings and in the discharge of other board duties when assigned by the board.

(5) The regional board of mental health may submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recommended proportionate share, not later than June 10 in each year. If the board of county commissioners shall include in the county budget the county's proportionate share of the regional board's budget, it shall be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region shall be derived from the county's general fund; provided, however, if the general fund is insufficient to meet the approved budget, a levy not to exceed one (1) mill may be made on the taxable valuation in addition to all other taxes allowed by law to be levied on such property.

(6) The regional board of mental health, with the approval of the division of mental hygiene, may establish a schedule of fees for mental health services supported by financial contributions of the region's participating counties, which fees shall be paid by each nonparticipating county for services rendered to the residents of such nonparticipating county. Such fees may be received by the board and used to implement the budget and to provide services.

History: En. Sec. 5, Ch. 246, L. 1967.

Compiler's Notes

The Community Mental Health Centers Act, referred to in subsection (1), is compiled in the United States Code as Tit. 42, secs. 2681 to 2687.

80-2408. Continuation of services. Nothing in this act shall be construed to prevent the continuation of existing mental health services or facilities.

History: En. Sec. 6, Ch. 246, L. 1967.

80-2409. Availability of services. The services of the division of mental hygiene of the department of institutions shall be made available without discrimination on the basis of race, color, creed or ability to pay and shall comply with the provisions of Title VI of the Civil Rights Act of 1964.

History: En. Sec. 7, Ch. 246, L. 1967.

Compiler's Notes

Title VI of the Civil Rights Act of 1964, referred to in this section, is compiled in the United States Code as Tit. 42, secs. 2000d to 2000d-4.

Repealing Clause

Section 8 of Ch. 246, Laws 1967 repealed all acts and parts of acts in conflict therewith.

80-2410. Mental health centers established—staffing. (a) The board of institutions shall establish mental health centers in Miles City and Glasgow for the care and treatment of mentally ill persons residing in Montana. Each center shall be staffed with at least one of each of the following:

(1) Psychiatrist.
(2) Psychologist.
(3) Psychiatric nurse or social worker.

(b) Each center shall provide the following services:

(1) Short term inpatient service.
(2) Partial inpatient service.
(3) Rehabilitation.
(4) Communities education.

History: En. Sec. 1, Ch. 255, L. 1967.

Title of Act

An act requiring the board of institutions to establish mental health centers in Miles City and Glasgow for care and treatment of mentally ill persons, providing staff and service requirements to be under supervision and regulations of the board; requiring the board to establish, construct, equip, maintain and staff a mental retardation center at Glendive, providing for residential and outpatient care of mentally retarded persons as an extension of the state training school and hospital under supervision and regulations of the board, not to exceed two hundred bed units; and providing for temporary transfers to state training school and hospital at Boulder.

80-2411. Supervision of mental health centers. The mental health centers shall be established, organized and supervised by the board of institutions, under rules and regulations of the board authorized in section 80-145 [80-1405].

History: En. Sec. 2, Ch. 255, L. 1967.

TITLE 81—STATE LANDS

Chapter
2. Commissioner of state lands and investments, 81-209.
3. Selection—classification, appraisal and exchange of lands, 81-304.
5. Coal mining leases and permits, 81-502.
11. State lands and investments—miscellaneous provisions, 81-1115 to 81-1121.
14. State forests—forester—timber sales—firewardens, 81-1403.
24. Development of state land resources, 81-2401 to 81-2408.

CHAPTER 1—DEPARTMENT OF STATE LANDS AND INVESTMENTS—GENERAL PROVISIONS

81-103. (1805.3) **Powers and duties of state board, etc.**

Leasing State-owned Land

State board of land commissioners had discretion to award ten-year lease to bidder at 33 1/3 per cent crop share, rather than to another who bid 50 per cent, especially where lessee had farmed the land before and the board was taking less risk. State ex rel. Thompson v. Babcock, — M —, 409 P 2d 808.

CHAPTER 2—COMMISSIONER OF STATE LANDS AND INVESTMENTS

Section
81-209. Salary and compensation.

81-209. (1805.14) **Salary and compensation.** The salary of the commissioner shall be payable monthly. The salary of the commissioner shall be in such amount as may be specified by the legislative assembly in the appropriation to the commissioner of state land and investments. If the legislative assembly does not specify a maximum salary for the commissioner, it shall be fixed by the state board of land commissioners after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The commissioner of state lands and investments shall be paid actual and necessary expenses while engaged in the performance of official duties outside of the state capitol.

History: En. Sec. 14, Ch. 60, L. 1927; amd. Sec. 1, Ch. 176, L. 1949; amd. Sec. 1, Ch. 164, L. 1951; amd. Sec. 1, Ch. 119, L. 1953; amd. Sec. 4, Ch. 225, L. 1963; amd. Sec. 8, Ch. 237, L. 1967.

Amendments

The 1967 amendment deleted "not more than ten thousand dollars ($10,000) per annum" before "payable monthly" in the first sentence; and inserted the second, third and fourth sentences.

CHAPTER 3—SELECTION—CLASSIFICATION, APPRAISAL AND EXCHANGE OF LANDS

Section
81-304. Exchange of lands with United States and counties—validation of prior actions.

81-304. (1805.19) **Exchange of lands with United States and counties—validation of prior actions.** The state board of land commissioners of the

state of Montana is hereby authorized and empowered to enter into contracts or agreements with the United States, or any department thereof having jurisdiction for the waiving and relinquishment to the United States of any and all rights of the state of Montana in and to sections sixteen (16) and thirty-six (36) of any township and to any other sections of state lands, provided that the state of Montana shall in lieu of the rights so waived and relinquished receive from the United States other lands of equal or greater value.

The state board of land commissioners of the state of Montana is hereby authorized to accept on behalf of the state of Montana title in fee simple to any land owned by a county in the state of Montana and to convey in exchange therefor state-owned land of approximately the same area and of a value not higher than the land received from the county whenever such exchange will result in consolidating the state-owned lands into more compact bodies.

All contracts and agreements heretofore entered into between the state board of land commissioners and the United States, or any department thereof, waiving and relinquishing the rights of the state of Montana to sections sixteen (16) and thirty-six (36) in any township in this state, and the selection of lands in lieu or [of] those so relinquished by the state are hereby ratified, confirmed and validated. The current user of the land transferred to the United States will continue to enjoy such use of such terms and conditions as may be required by the federal government and in accordance with the Multiple Use Act and the current user on the land received from the United States will continue to utilize the land on the terms and conditions imposed by law or the state board of land commissioners.

History: En. Sec. 19, Ch. 60, L. 1927; amd. Sec. 1, Ch. 151, L. 1933; amd. Sec. 1, Ch. 117, L. 1951; amd. Sec. 1, Ch. 257, L. 1965; amd. Sec. 1, Ch. 39, L. 1967.

Compiler's Notes

The Multiple Use Act, referred to in the last paragraph of this section, is compiled in the United States Code as Tit. 43, secs. 1411 to 1418.

Amendments

The 1967 amendment deleted the last sentence of the first paragraph, which read "The amount of state land relinquished under this section in any one year shall not exceed six sections"; and substituted the last sentence of the third paragraph for "The land received from the United States, under this provision, must be located in the same county as the relinquished land, and the present lessees or permittees must be recognized for the continuance of their use of the land on such terms as may be required by the respective agencies."

CHAPTER 4—LEASING OF AGRICULTURAL LANDS—GRAZING LANDS AND CITY AND TOWN LOTS

81-401. Policy of state as to appraisal and leasing state land.

References

State ex rel. Thompson v. Babcock, — M —, 409 P 2d 808.

81-402. (1805.20) Lease of state lands—crops share rental basis used.

References

State ex rel. Thompson v. Babcock, — M —, 409 P 2d 808.

81-405. (1805.21) **Renewal leases—preference right of lessee.**

References

State ex rel. Thompson v. Babcock, — M —, 409 P 2d 808.

CHAPTER 5—COAL MINING LEASES AND PERMITS

Section
81-502. Maximum term of lease—form—fee.

81-502. (1805.39) **Maximum term of lease—form—fee.** No coal mining lease shall be issued for a longer term than twenty (20) years, but the board may establish such rules and regulations for the renewal of a lease at the expiration of the term as it may deem proper and necessary. The board shall prescribe the form of the lease; the fee for issuing the lease and approving the bond hereinafter provided shall be five dollars ($5.00) payable to the commissioner.

History: En. Sec. 39, Ch. 60, L. 1927; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967.

Amendments

The 1967 amendment increased the maximum term for leases on state lands from 10 to 20 years, and increased the fee from $2 to $5.

CHAPTER 11—STATE LANDS AND INVESTMENTS—MISCELLANEOUS PROVISIONS

Section
81-1115. State land equalization payments to counties—list of lands transmitted to county assessor.
81-1116. Computation of state land equalization payment.
81-1117. Form to be completed by county assessor—method of computation shown.
81-1118. County statement on equalization payments examined by commissioner—claim filed with controller.
81-1119. Warrant for state land equalization payments to counties.
81-1120. County distribution of state land equalization payments.
81-1121. School district use of state land equalization proceeds.

81-1115. State land equalization payments to counties—list of lands transmitted to county assessor. The commissioner of state lands and investments for the state of Montana shall, on or before the first Monday of April of every year, prepare and transmit a statement to the county assessor of each county in the state of Montana wherein the state of Montana has real property in excess of six per cent (6%) of the total land area of the county and from which the state of Montana derives grazing, agricultural or forest income. The statement shall contain the total number of acres owned by the state in that county and it shall list the acres separately as grazing, agricultural or forest land.

History: En. Sec. 1, Ch. 235, L. 1967.

Title of Act

An act providing for reimbursement to counties for loss of revenue because of tax exempt status of state owned land in excess of six per cent (6%) of the total land area; providing for procedures to effectuate this purpose; prescribing the duties of the commissioner of state lands and investments, county assessors and the state controller; limiting the maximum payments; and providing an effective date.

81-1116. Computation of state land equalization payment. The county assessor shall compute the amount of taxes which would be payable on the

county assessments of said property as if it were owned by, and taxable to, a taxpayer of such county; provided that, if the land is not classified, the sum to be listed shall be determined by the average tax payment made on like property within the county where said land is situated, not to exceed twelve cents ($.12) per grazing acre, thirty-five cents ($.35) per agricultural acre, and twelve cents ($.12) per forest acre. The average tax may be derived from the most recent biennial report of the state board of equalization. The total figure arrived at by this method shall be called the gross assessment figure. The county exemption factor shall be determined by dividing the percentage the state owned land bears to the total land area of the county into six per cent (6%). This quotient shall be multiplied by the gross assessment figure and the product is called the state exemption figure. The state exemption figure shall be subtracted from the gross assessment to give the state land equalization payment.

History: En. Sec. 2, Ch. 235, L. 1967.

81-1117. Form to be completed by county assessor — method of computation shown. The commissioner of state lands and investments shall provide a form to be followed and completed by the county assessor. The county assessor shall, on or before the first day of October, follow the form of the commissioner and make the computations required and shall submit to the commissioner the completed form which shall show the computations and method used in arriving at the state land equalization payment.

History: En. Sec. 3, Ch. 235, L. 1967.

81-1118. County statement on equalization payments examined by commissioner—claim filed with controller. The commissioner of state lands and investments shall examine the statement returned by the county assessor for accuracy, and in no case shall the state land equalization payment be approved unless the state exemption figure is deducted from the gross assessment figure in the statement. The commissioner of state lands and investments shall, on or before November 1 of each year, prepare and file a claim with the state controller for all counties who are eligible for state land equalization payments, and this claim shall show the amount of money each eligible county will receive.

History: En. Sec. 4, Ch. 235, L. 1967.

81-1119. Warrant for state land equalization payments to counties. The state controller shall, on or before the first day of December, approve and authorize the issuance of a warrant on the general fund of the state of Montana made payable to the county treasurer of the counties shown on the claim for the payment of the state land equalization payment.

History: En. Sec. 5, Ch. 235, L. 1967.

81-1120. County distribution of state land equalization payments. The county treasurer shall distribute the money received under this act within their county as hereinafter provided; sixty per cent (60%) of total payment shall be broken down into cents per acre of total state owned land within the county, and apportioned between the elementary school districts

in accordance with the amount of state owned land in each elementary district. Forty per cent (40%) shall be allotted to the county road fund.

History: En. Sec. 6, Ch. 235, L. 1967.

81-1121. School district use of state land equalization proceeds. The money received by any school district under this act shall be designated as district money for the general maintenance and operation of the elementary schools of the district. Such money may be used by the district as all other cash balances are used, in accordance with the provisions of section 75-3618, R.C.M. 1947.

History: En. Sec. 7, Ch. 235, L. 1967.

Effective Date

Section 8 of Ch. 235, Laws 1967 read "This act is effective January 1, 1968."

CHAPTER 14—STATE FORESTS—FORESTER—TIMBER SALES—FIREWARDENS

Section
81-1403. State forester—appointment—compensation—term—assistants.

81-1403. (1830.3) **State forester—appointment—compensation—term—assistants.** The governor, by and with the advice and consent of the senate, shall appoint a state forester to have general charge of all the state's forest. He shall be technically trained and experienced in forestry and a graduate of an accredited forestry school, and his salary shall be in such amount as may be specified by the legislative assembly in the appropriation to the state forester, together with the actual, necessary expenses while engaged in outside work in connection with his office and its duties as defined by law and the regulations of the state board of land commissioners and the state board of forestry. If the legislative assembly does not specify the maximum salary of the state forester, his salary shall be fixed by the state board of forestry after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. Such expenses shall be payable monthly from the state's general fund and/or the appropriations made to those other boards to which he, by law, has been designated secretary or executive officer. His term of office shall be for four (4) years. With the consent and approval of the state board of land commissioners the state forester shall appoint and fix the salaries and expenses of such office help, district foresters, firewardens, cruisers, scalers, slash disposal men, and such other trained and qualified assistants as may be necessary in the administration of the state forests and the forested lands within the state. Provided, however, that consent and approval of such appointments by any board shall be restricted to those appointments made for the purposes of that board as defined by law.

History: En. Sec. 3, Ch. 179, L. 1925; amd. Sec. 1, Ch. 161, L. 1949; amd. Sec. 1, Ch. 192, L. 1953; amd. Sec. 1, Ch. 28, L. 1955; amd. Sec. 1, Ch. 94, L. 1957; amd. Sec. 5, Ch. 225, L. 1963; amd. Sec. 39, Ch. 177, L. 1965; amd. Sec. 9, Ch. 237, L. 1967.

Amendments

The 1967 amendment substituted "be in such amount as may be specified by the

legislative assembly in the appropriation to the state forester" for "not be more than ten thousand eighty dollars ($10,080) per annum, at the discretion of the state land board" after "his salary shall" in the second sentence; and inserted the third and fourth sentences.

CHAPTER 24—DEVELOPMENT OF STATE LAND RESOURCES

Section
81-2401. Policy of state.
81-2402. Definition of terms.
81-2403. Development account in earmarked revenue fund—purposes for which used.
81-2404. Restriction on use of income from school and institutional lands.
81-2405. Deductions from income for development account—maximum percentage.
81-2406. Crediting of deductions from land income.
81-2407. Investment of moneys in development account.
81-2408. Rules and regulations.

81-2401. Policy of state. It is in the best interest and to the great advantage of the state of Montana to seek the highest development of state-owned lands in order that they might be placed to their highest and best use and thereby derive greater revenue for the support of the common schools, the university system and other institutions benefiting therefrom and that in so doing the economy of the local community as well as the state is benefited as a result of the impact of such development.

History: En. Sec. 1, Ch. 295, L. 1967.

Title of Act

An act relating to lands owned by the state of Montana; creating a resource development account in the earmarked revenue fund for the purpose of developing state-owned lands to increase the revenue therefrom for the support of the common schools and other institutions and objects for which the lands are held in trust; and authorizing allowances from the income from the lands for the resource development account in the earmarked revenue fund.

81-2402. Definition of terms. Unless a different meaning is plainly required by the context, as used in this act:

"Account" means the resource development account in the earmarked revenue fund.

"Department" means the department of state lands and investments.

"Board" means the state board of land commissioners.

"Income" means all proceeds received for the use of state land except revenues required by law to be placed in the Montana trust and legacy fund.

History: En. Sec. 2, Ch. 295, L. 1967.

81-2403. Development account in earmarked revenue fund—purposes for which used. A resource development account in the earmarked revenue fund in the state treasury is hereby created to be used solely for the purpose of investing in the improvement and development of state-owned lands acquired by grant or foreclosure in order to increase the revenue to be derived therefrom for common school support and support of the other entities, institutions and objects for which the lands are held in trust. The developments contemplated may include those projects that will develop or conserve the various state land resources including; water, both surface and underground, grazing land, agricultural land and timber land to the benefit of the state of Montana. They may also include expenses necessary

to perfect title to lands hereafter claimed by the state of Montana which are suitable for development and other expenses or costs which in the judgment of the board are desirable or necessary in order to develop or increase the value of the land or the revenue therefrom. Appropriations from the account shall be expended for no other purposes.

History: En. Sec. 3, Ch. 295, L. 1967.

81-2404. Restriction on use of income from school and institutional lands. Moneys in the account derived from the income from public school lands, university lands, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands, shall be expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in developing public lands of the same trust.

History: En. Sec. 4, Ch. 295, L. 1967.

81-2405. Deductions from income for development account—maximum percentage. The board shall determine the amount or percentage of income, not to exceed two and one-half per cent (2½%) which is necessary to achieve the purposes of this act, and shall provide by rule for deductions of that amount or percentage from the income which is secured from the lands by the department for the trusts benefited by this act.

History: En. Sec. 5, Ch. 295, L. 1967.

81-2406. Crediting of deductions from land income. All deductions from gross proceeds made in accordance with section 4 [81-2404] of this act shall be paid into the account and the balance of such proceeds not affected hereby shall be paid into the state treasury to the credit of the account otherwise entitled thereto.

History: En. Sec. 6, Ch. 295, L. 1967.

81-2407. Investment of moneys in development account. The board shall invest the moneys in the resource development account in safe interest-bearing securities for the benefit of the account.

History: En. Sec. 7, Ch. 295, L. 1967.

81-2408. Rules and regulations. The board shall adopt such rules as it deems necessary and proper for the purpose of carrying out the provisions of this act.

History: En. Sec. 8, Ch. 295, L. 1967.

Separability Clause

Section 9 of Ch. 295, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

TITLE 82—STATE OFFICERS, BOARDS AND DEPARTMENTS

Chapter
1. State controller, 82-110.
4. Attorney general, 82-414 to 82-420.
5. Clerk of supreme court, 82-503.
8. Entomologist, state—duties as to agriculture, 82-804.1 to 82-804.4.
10. Examiner, state, 82-1002, 82-1005, 82-1007, 82-1009, 82-1011.
12. Fire marshal, state, 82-1201, 82-1202, 82-1202.1, 82-1202.2, 82-1208 to 82-1211, 82-1218.
15. Hail insurance, state board of, 82-1516, 82-1519.
19. Purchasing department and agent, 82-1916, 82-1925.1, 82-1927, 82-1928.
20. Reporters of decisions of supreme court—publication and distribution of reports, 82-2002.
27. Co-ordinator of Indian affairs, 82-2702.
30. Natural resources and development council, 82-3001.
33. Department of administration, 82-3306, 82-3316.
35. Committee on problems of aging, 82-3501 to 82-3506.
36. Montana arts council, 82-3601 to 82-3609.
37. Planning and Economic Development Act, 82-3701 to 82-3709.
38. Post-enemy-attack continuity in government, 82-3801 to 82-3809.
39. Teletypewriter communications system for law enforcement, 82-3901 to 82-3906.

CHAPTER 1—STATE CONTROLLER

Section
82-110. Controller to prescribe uniform accounting system.

82-110. Controller to prescribe uniform accounting system. (a) The controller shall prescribe and install uniform accounting and reporting for the several state boards, bureaus, departments, commissions and institutions showing the receipt, use and disposition of all public money and property, and shall develop plans for improvements and economies in the organization and operation thereof which shall be submitted to the respective heads of such boards, bureaus, departments, commissions and institutions. Copies of all such plans shall be delivered to the governor and additional copies shall be retained in the office of the controller for inspection by the members of the legislative assembly.

(b) The controller shall have the power and it shall be his duty to examine into all financial affairs of every state board, commission, bureau, department and institution for the purpose of developing plans for improvements and economies in the organization and operation thereof, and for the purpose of enabling him to properly perform any of the duties imposed upon him by this act.

(c) and (d). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967.

Amendments

The 1967 amendment deleted "acting with the state examiner" after "controller" near the beginning of subsection (a) and deleted "in addition to those enumerated in section 82-102 hereof" after "institutions"; and deleted "shall receive copies of all audits and reports of the state examiner relating to all state departments, boards, bureaus, institutions and agencies and, without duplicating work done in preparing such audits and reports" after "The controller" near the beginning of subsection (b).

CHAPTER 4—ATTORNEY GENERAL

Section
82-414. Criminal investigator position created—appointment and qualifications.
82-415. Definition of term.
82-416. Powers and duties of criminal investigator.
82-417. Access to files of criminal investigator.
82-418. Criminal investigator's office covered by retirement program.
82-419. State agencies to co-operate with criminal investigator.
82-420. Location of criminal investigator's office.

82-414. Criminal investigator position created—appointment and qualifications. (1) There is hereby created a permanent position of criminal investigator within the office of the state attorney general.

(2) The attorney general shall appoint the investigator and other necessary assisting personnel and fix their compensation.

(3) The investigator shall be a person qualified by experience, training and high professional competence in criminal investigation. Qualifications shall be equal to those of similarly assigned federal bureau of investigation personnel.

History: En. Sec. 1, Ch. 176, L. 1967.

Title of Act

An act creating the position of criminal investigator within the department of the attorney general and defining the duties of said position.

82-415. Definition of term. As used in this act:

"Investigator" means the person appointed to the position of criminal investigator within the attorney general's office.

History: En. Sec. 2, Ch. 176, L. 1967.

82-416. Powers and duties of criminal investigator. The investigator shall have the power and duty to:

(1) Assist city, county, state and federal law enforcement agencies at their request by providing expert and immediate aid in investigation and solution of felonies committed in the state;

(2) Assist various law enforcement schools held in the state for law officers when requested;

(3) Co-operate with the bureau of criminal identification and investigation.

History: En. Sec. 3, Ch. 176, L. 1967.

82-417. Access to files of criminal investigator. A person with a known criminal record shall not be permitted access to the files of the investigator, nor shall anyone else, without the order of a district judge or a supreme court justice.

History: En. Sec. 4, Ch. 176, L. 1967.

82-418. Criminal investigator's office covered by retirement program. The investigator and assisting personnel shall be covered by the public employees' retirement system.

History: En. Sec. 5, Ch. 176, L. 1967.

82-419. State agencies to co-operate with criminal investigator. All state departments and agencies shall co-operate with the investigator in providing

transportation, educational and laboratory facilities for his use when so requested.

History: En. Sec. 6, Ch. 176, L. 1967.

82-420. Location of criminal investigator's office. The office of the criminal investigator shall be located in Deer Lodge, Montana.

History: En. Sec. 7, Ch. 176, L. 1967.

CHAPTER 5—CLERK OF SUPREME COURT

Section
82-503. Fees.

82-503. (372) **Fees.** He must collect in advance the following fees: For filing the transcript on appeal, in each civil case appealed to the supreme court, twenty dollars ($20) payable by the appellant, and ten dollars ($10) payable by respondent, at the time of his appearance, in full for all services rendered in each case, up to the remittitur to the court below; for filing petition for any writ, twenty dollars ($20), in full for all services rendered in each cause; for certificate of admission as attorney and counselor, five dollars ($5); for making transcripts, copies of papers or record, fifteen cents ($.15) per folio; for comparing any document requiring a certificate, five cents ($.05) per folio; for each certificate under seal, one dollar ($1).

Three-fourths (¾) of all fees collected by him must be paid into the state treasury, which shall be credited to the credit of the general fund, one-fourth (¼) of all fees collected by him shall be paid to the secretary of the public employees' retirement system board to be credited to the judges' retirement fund.

History: En. Sec. 872, Pol. C. 1895; re-en. Sec. 301, Rev. C. 1907; re-en. Sec. 372, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1939; amd. Sec. 1, Ch. 112, L. 1943; amd. Sec. 87, Ch. 147, L. 1963; amd. Sec. 3, Ch. 218, L. 1967.

Compiler's Notes

The last paragraph of section 3, Chapter 218, Laws 1967, read: "This act shall be in full force and effect from and after its passage and approval."

Amendments

The 1967 amendment increased filing fees on appeals to the supreme court, payable by the appellant, from $10 to $20, and by the respondent, from $5 to $10 and increased fees for filing petition for any writ from $10 to $20 in the first paragraph; added "Three-fourths (¾) of" at the beginning of the second paragraph; added the passage beginning "and one-fourth (¼) of all fees collected" at the end of the second paragraph; and made minor changes in style.

CHAPTER 8—ENTOMOLOGIST, STATE—DUTIES AS TO AGRICULTURE

Section
82-804.1. State entomologist of Montana.
82-804.2. Duties of the state entomologist.
82-804.3. Biennial report.
82-804.4. Expenses.

82-801 to 82-804. (913 to 916) **Repealed.**

Repeal

These sections (Secs. 1 to 4, Ch. 59, L. 1903; Secs. 1 to 4, Ch. 103, L. 1907; Sec. 1, Ch. 114, L. 1925), relating to the state entomologist, were repealed by Sec. 5, Ch. 75, Laws 1967.

82-804.1. State entomologist of Montana. The state entomologist of Montana shall be an entomologist who is a member of the resident faculty of the Montana agricultural experiment station at Bozeman, Montana, and who shall be appointed by the dean of the college of agriculture of Montana state university.

History: En. Sec. 1, Ch. 75, L. 1967.

Title of Act

An act providing for the appointment, qualifications and duties of the state entomologist; providing that expenses be paid out of the legislative appropriation for his office; and repealing sections 82-801, 82-802, 82-803 and 82-804, R. C. M. 1947.

82-804.2. Duties of the state entomologist. It shall be the duty of the state entomologist to conduct investigations pertaining to insects and other arthropods which affect or may affect plants and animals. When an injurious infestation of an insect or other arthropod occurs in any part of the state, it shall be his duty, so far as it is possible without conflicting with his other duties, to go to the scene of the infestation or send a suitable qualified assistant. The state entomologist or said assistant shall determine the extent and seriousness of the infestation and make public the best remedies to be employed.

History: En. Sec. 2, Ch. 75, L. 1967.

82-804.3. Biennial report. The state entomologist shall in odd-numbered years make a biennial report on or before the first day of January, which report shall be published by the Montana agricultural experiment station as one of its regular bulletins, and shall contain a report of the work of the office and the insect problems which arose during the biennium.

History: En. Sec. 3, Ch. 75, L. 1967.

82-804.4. Expenses. The state entomologist shall receive no compensation for his services other than that which he may receive from the Montana agricultural experiment station and Montana state university, but such office and laboratory expenses and such salaries of necessary assistants, together with such travel and per diem expenses for himself and assistants incurred in the course of performing the duties prescribed by this act, shall be paid out of sums appropriated from time to time by the legislative assembly of the state of Montana to the state entomologist. Payment shall be made on claims certified by the state entomologist and presented to the appropriate state agency.

History: En. Sec. 4, Ch. 75, L. 1967.

Repealing Clause

Section 5 of Ch. 75, Laws 1967 read "Sections 82-801, 82-802, 82-803 and 82-804, R. C. M. 1947, are repealed."

Effective Date

Section 6 of Ch. 75, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 20, 1967.

CHAPTER 10—EXAMINER, STATE

Section
82-1002. Duties of state examiner.
82-1005. Power to examine books and papers.
82-1007. Access to accounts of public officers—actions to compel.
82-1009. Laws applicable to such examinations.
82-1011. Salary and expenses.

82-1002. (210) **Duties of state examiner.** The duties of the state examiner and his assistants are:

1. To examine at least once in each year the books and accounts of the state treasurer, clerk of the supreme court, county treasurers, county clerks, county assessors, district court clerks, county auditors, sheriffs, public administrators, boards of county commissioners of each county, and all other county and municipal officers, boards and institutions.

2. To prescribe the general methods and details of accounting for the receipt and disbursement of all moneys belonging to the counties, cities, towns, or school districts, and to establish in all such offices such general methods and details of accounting as are required by law or are prescribed by the state examiner, and all county, city, town or school district officers are hereby compelled to conform therewith.

3. To visit each and every office of the officers, boards and institutions named in this act at least once in each year; and at such time to examine the books, accounts and vouchers in said office, to verify statements of receipts and expenditures, and indebtedness, and to examine and pass upon the character and amounts of any commissions, percentage, or charges for services, exacted by any officer, and of all claims allowed by any of said officers, boards or institutions.

4. To visit twice each year, or oftener, without previous notice, each of the banks, banking corporations and saving banks, building and loan associations, investment and loan companies incorporated under the laws of this state, or doing business under any law of the state concerning corporations, and to examine into their affairs and ascertain their financial condition; to inspect and verify the value and the amount of their securities and assets, and to inquire into any violation of laws governing such banks, institutions, building and loan associations.

5. The state examiner, after examination of the affairs of any officer or board of county commissioners, must make report to the governor and to the attorney general of the result of such examination, within sixty days thereafter; and if any violation of law or nonperformance of duty is found on the part of any such officer or board, they must be proceeded against by the attorney general or county attorney as provided by law.

6. The state examiner, or his assistants, after the examination of the affairs of any county officers, must make report of such examination to the board of county commissioners and to the county attorney of such county, within thirty days after such examination; and if any violations of law or nonperformance of duty is found on the part of any county officer or board, such officer or board must be proceeded against by the county attorney of the county as provided by law.

7. The state examiner must make an annual report to the governor immediately after the end of each fiscal year.

8. It shall be the duty of the county attorneys of the various counties of the state of Montana and the city attorneys of the various cities and towns of the state of Montana to make report to the state examiner within thirty days after receiving from the state examiner the report of any examination of any county, city or town, as to what proceedings he

has instituted or is intending to institute relating to violations of law and nonperformance of duty, as set forth in the report of the state examiner.

9. If any county or city attorney refuses or neglects to notify the state examiner within thirty days after receiving the report of any examination of any county, city or town, as to what proceedings he has instituted or is about to institute against any officer for violations of law or nonperformance of duty, as evidenced by matters of record, and as set forth in the state examiners report; the state examiner may withhold the salary of such county or city attorney by filing notice with the proper officials, until proper and satisfactory explanation has been made to the state examiner for such nonperformance of duty, provided further, that should the county or city attorney fail or refuse to prosecute such cases, the state examiner may employ an attorney to prosecute such case at the expense of the county, city, or town.

History: Ap. p. Sec. 491, Pol. C. 1895; amd. Sec. 1, p. 105, L. 1897; amd. Sec. 491, Ch. 100, L. 1903; re-en. Sec. 209, Rev. C. 1907; re-en. Sec. 210, R. C. M. 1921; amd. Sec. 1, Ch. 78, L. 1923; amd. Sec. 14, Ch. 249, L. 1967.

Amendments

The 1967 amendment, in subdivision 1, deleted "state auditor, secretary of state" after "treasurer"; deleted "state game warden, register of state land office, and all other state officers having the collection or handling of state money" after "supreme court"; inserted "county and municipal" after "all other"; deleted "and" before "boards"; and added "and institutions" after "boards"; in subdivision 2, deleted "and the educational, charitable, penal, and reformatory institutions of the state of Montana" after "school districts"; deleted "and officers of educational, charitable, penal and reformatory institutions of the state of Montana" after "district officers"; deleted old subdivision 3, which read, "To examine at least once each year the books and accounts of the treasurer and secretary of each and all of the educational, charitable, penal, and reformatory institutions of the state of Montana, and to examine into the financial affairs and conditions of each and all of said institutions"; redesignated old subdivisions 4 through 10 as new subdivisions 3 through 9; in new subdivision 5, which was old subdivision 6, substituted "officer or" for "state officer, board, or institution" after "affairs of any"; and in new subdivision 7, which was old subdivision 8, deleted "but such report must not be printed unless the printing thereof be ordered by the state board of examiners" at the end of the subdivision.

82-1005. (212) **Power to examine books and papers.** The state examiner or his assistant has power to examine any books, papers, accounts, and documents in the office or possession of any county or banking or other institution referred to in this act, and to send for persons or papers and to examine under oath any and all persons concerning the same.

History: Ap. p. Sec. 494, Pol. C. 1895; amd. Sec. 493, p. 107, L. 1897; amd. Sec. 493, Ch. 100, L. 1903; re-en. Sec. 211, Rev. C. 1907; re-en. Sec. 212, R. C. M. 1921; amd. Sec. 15, Ch. 249, L. 1967.

Amendments

The 1967 amendment deleted "or state officer" after "any county."

82-1007. (214) **Access to accounts of public officers—actions to compel.** (1). * * * [Same as parent volume.]

(2) Any county, city, town or school district officer who shall refuse to accord the state examiner access during an examination of such officer's accounts, to his cash, bank accounts, or any of the papers, vouchers or records of his office, or if the state examiner, after counting the cash and verifying the bank accounts of such officer shall find that a shortage exists in the accounts of said officer, the state examiner shall forthwith file a

verified preliminary report showing the refusal of such officer to accord to him access to the examination of such accounts, cash, bank accounts, papers, vouchers or records, or the existence of such shortage, and the amount or approximate amount thereof with the board of county commissioners of the proper county if the officer be a county or school district officer, and with the city or town council if the officer be a city or town officer; upon the filing of such verified statement, such officer shall immediately be suspended from the duties and emoluments of his office, and the board of county commissioners of the county in case of county or school district officers, and the city or town council in case of a city or town officer, shall appoint some qualified person to such office, pending the completion of such examination.

(3) Upon the completion of the audit or examination of the accounts of such officer by the state examiner, if a shortage shall be found to have existed in the accounts of such officer on the date of the commencement of such examination, the state examiner shall file, in the office of the board of county commissioners of the proper county in the case of a county or school district officer, and with the city or town council in the case of a city or town officer, a verified final report of the examination or audit, showing such shortage, whereupon the right of such officer to such office shall be forfeited, and such office shall thereupon become vacant as of the date of the suspension of such officer as hereinabove provided, and the person appointed to such office upon the suspension of said officer shall hold said office until the election and qualification of his successor, as provided by law.

(4). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 84, L. 1915; re-en. Sec. 214, R. C. M. 1921; amd. Sec. 1, Ch. 179, L. 1939; amd. Sec. 16, Ch. 249, L. 1967.

Amendments

The 1967 amendment deleted "state" after "Any" at the beginning of subsection (2); deleted "with the secretary of state if such officer shall be a state officer" after "amount thereof"; deleted "and the governor, in the case of a state officer" after "of his office"; and, in subdivision (3), deleted "the secretary of state in case of a state officer, and" after "in the office of."

82-1009. (216) **Laws applicable to such examinations.** That all laws now in force relative to the examination of the books and accounts of county officers, are, and the same are hereby declared to be applicable to the examination of the books and accounts of incorporated cities and towns, and to the books and accounts of school districts of the first and second class.

History: En. Sec. 2, Ch. 84, L. 1913; re-en. Sec. 216, R. C. M. 1921; amd. Sec. 17, Ch. 249, L. 1967.

Amendments

The 1967 amendment deleted "state and" after "accounts of."

82-1011. (218) **Salary and expenses.** The salary of the state examiner, for all services rendered in any capacity whatever, shall be in such amount as may be specified by the legislative assembly in the appropriation to the state examiner, and in addition thereto the state shall pay the necessary office and travel expenses of himself and assistants. If the legislative assembly does not specify the maximum salary of the state examiner an increase in the salary of the state examiner must be approved by the board

of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry.

History: En. Sec. 1, Ch. 149, L. 1907; Sec. 213, Rev. C. 1907; amd. Sec. 1, Ch. 93, L. 1911; re-en. Sec. 218, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1953; amd. Sec. 7, Ch. 225, L. 1963; amd. Sec. 10, Ch. 237, L. 1967.

Amendments

The 1967 amendment substituted "in such amount * * * to the state examiner" for "not more than ten thousand dollars ($10,000) per year" in the first sentence, and added the last two sentences.

82-1014 to 82-1016. Repealed.

Repeal

These sections (Secs. 1 to 3, Ch. 279, L. 1959; Secs. 1, 2, Ch. 81, L. 1961; Sec. 91, Ch. 199, L. 1965), relating to the examination of accounts of state institutions, were repealed by Sec. 23, Ch. 249, Laws 1967.

CHAPTER 12—FIRE MARSHAL, STATE

Section
82-1201. Creation of office of state fire marshal—fire prevention advisory commission.
82-1202. Powers of the state fire marshal.
82-1202.1. Rules promulgated by state fire marshal—adoption of other standards.
82-1202.2. Notice of public hearing—publication—adoption of rules—effective date.
82-1208. Special deputy fire marshals—acting fire marshal—fire marshal's employees.
82-1209. Investigation of fires.
82-1211. Penalty for violation of law.
82-1218. Entering of buildings for purpose of examination.

82-1201. (2737) **Creation of office of state fire marshal—fire prevention advisory commission.** (1) There is an office of state fire marshal, which is under the supervision and control of the commissioner of insurance.

(2) The state fire marshal shall be appointed by the commissioner of insurance and shall serve at his pleasure.

(3) A person appointed state fire marshal shall:

(a) have at least ten (10) years of progressively responsible experience in fire protection; or

(b) a degree in engineering from a recognized institution of higher education and two (2) years' experience in fire protection; or

(c) a degree from a recognized institution of higher education in fire protection engineering or fire protection technology.

(4) Not later than thirty (30) days after this act becomes effective the commissioner of insurance shall appoint a fire prevention advisory commission composed of the following members:

(a) One person representing the fire insurance industry whose initial term shall be for one (1) year;

(b) One person representing industry whose initial term shall be for one (1) year;

(c) One person representing full-time paid fire departments whose inital term shall be for two (2) years;

(d) One person representing volunteer fire departments whose initial term shall be for two (2) years;

(e) One person representing architects of the state whose initial term shall be for three (3) years;

(f) One person representing the public whose initial term shall be for four (4) years;

(g) The commissioner of insurance.

After termination of the initial term, all members shall be appointed for four (4) year terms. Appointed members of the commission shall be reimbursed for meetings at the rate of twenty dollars ($20) per day plus actual expenses including mileage, food, and lodging. The commissioner of insurance shall serve as chairman, and the state fire marshal shall serve as secretary of the commission.

History: En. Sec. 1, Ch. 148, L. 1911; re-en. Sec. 2737, R. C. M. 1921; amd. Sec. 1, Ch. 229, L. 1967.

Amendments

The 1967 amendment completely rewrote this section. Prior to amendment, it read, "There is hereby created and established in the office of state fire marshal, which shall be a department of and under the supervision and control of the state auditor and commissioner of insurance ex officio."

82-1202. (2737.1) **Powers of the state fire marshal.** The state fire marshal shall:

(1) Make at least one inspection during every year, of each state institution, and submit a copy of the report to the state department of institutions with recommendations in regard to fire prevention, fire protection and to the public safety.

(2) Make at least one inspection during every year, of each unit of the Montana university system, and submit a copy of the report to the executive secretary of the university system with recommendations in regard to fire prevention, fire protection and to the public safety.

(3) Inspect public, business, or industrial buildings and require conformance to law or rules promulgated under the provisions of this act.

(4) Do all things necessary and convenient for carrying into effect the fire prevention laws of this state governing this act and may, promulgate necessary rules for safeguarding lives and property from the hazards of fire and explosion after consultation with the fire prevention advisory commission and approval by the commissioner of insurance. No rule shall become effective until after a public hearing held in the manner described in section 4 [82-1202.2] of this act. If fire prevention rules promulgated by the fire marshal are violated, he may maintain an action to enjoin the use of all or a portion of a building or facility, or restrain a specific activity, until there is compliance with the rules.

History: En. Sec. 1, Ch. 124, L. 1929; amd. Sec. 1, Ch. 18, L. 1943; amd. Sec. 1, Ch. 278, L. 1947; amd. Sec. 93, Ch. 199, L. 1965; amd. Sec. 2, Ch. 229, L. 1967.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

82-1202.1. Rules promulgated by state fire marshal—adoption of other standards. (1) Rules promulgated by the state fire marshal by authority of section 82-1202, R.C.M. 1947, shall establish minimum standards of fire protection requirements, including but not limited to requirements for design, construction, installation, operation, storage, handling, maintenance or use of the following: structural requirements for various types of construction; building restrictions within congested districts; exit facilities

from structures; fire alarm systems and fire extinguishing systems; fire emergency drills; flue and chimney construction; heating devices; electrical wiring and equipment; air conditioning, ventilating and other duct systems; refrigeration systems; flammable liquids; oil and gas wells; application of flammable finishes; explosives, acetylene, liquefied petroleum gas and similar products; calcium carbide and acetylene generators; flammable motion picture film, combustible fibres; hazardous chemicals; rubbish, open flame devices; parking of vehicles; dust explosions; lightning protection; and other special fire hazards.

(2) Standards of the National Fire Protection Association, United States Bureau of Standards, American Insurance Association Standards may be adopted in whole or in part by reference.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967.

82-1202.2. Notice of public hearing—publication—adoption of rules—effective date. Notice of the time and place of public hearing required by section 82-1202, R.C.M. 1947, shall be published at least five (5) times in at least two (2) newspapers of general circulation throughout the state. The last published notice shall appear not less than fifteen (15) days prior to the public hearing. A copy of the notice of public hearing shall be furnished by mail to any person who files his address with the fire marshal together with a request for such notification. Any person may appear before the state fire marshal and present testimony on proposed rules in the manner prescribed by the marshal. Following the public hearing, the state fire marshal may approve, approve in modified form, or disapprove a proposed rule. The state fire marshal shall specify the date when any new rule or change in an existing rule becomes effective.

History: En. 82-1202.2 by Sec. 4, Ch. 229, L. 1967.

82-1203, 82-1204. (2737.2, 2738) **Repealed.**

Repeal

These sections (Sec. 2, Ch. 148, L. 1911; Sec. 2, Ch. 124, L. 1929), relating to the appointment of the state fire marshal and to violations of section 82-1202, were repealed by Sec. 14, Ch. 229, Laws 1967.

82-1208. (2742) **Special deputy fire marshals—acting fire marshal—fire marshal's employees.** (1) In an emergency, or during the absence or disability of the state fire marshal, the commissioner of insurance may appoint an acting fire marshal, who shall perform the duties of the office, or any duty which may be assigned to him, such appointment to cease when the necessity therefor has been relieved.

(2) The state fire marshal may appoint special deputy state fire marshals throughout the state and define their duties. When performing these duties or attending a training course conducted by the state fire marshal, special deputy fire marshals may be paid at a rate not to exceed twenty dollars ($20) per day plus per diem allowance for expenses and mileage at the same rates specified for state employees.

(3) The fire marshal may appoint assistants and clerical employees to perform duties as specified by the marshal to assist in carrying out the duties assigned him by law.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R. C. M. 1921; amd. Sec. 5, Ch. 229, L. 1967.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

82-1209. (2743) **Investigation of fires.** (1) The cause, origin, and circumstances of each fire, by which property has been destroyed or damaged, shall be investigated to determine whether the fire was the result of carelessness or design. The state fire marshal may superintend and direct the investigation if he deems it necessary.

(2) If the fire occurs within a municipality or organized fire district, the chief of the fire department shall make the investigation. If the fire occurs outside a municipality or organized fire district, the county sheriff shall make the investigation. If it appears that the fire was of suspicious origin, or if there was a loss of human life, the official responsible for the investigation shall notify the state fire marshal within twenty-four (24) hours, and shall file a written report of the cause with the state fire marshal within ten (10) days.

(3) If it appears that the fire was of suspicious origin, if there was a loss of human life, or if the property loss exceeded one hundred dollars ($100) as soon as any adjustment has been made, a person representing the insurance company shall notify the official responsible for investigating the fire of the amount of adjustment and the apparent cause and circumstances of the fire.

(4) On or before February 15 of each year, each official responsible for investigating fires shall file a fire loss report for the immediately preceding calendar year with the state fire marshal. Reports shall be on forms, and shall contain information, prescribed by the state fire marshal.

History: En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R. C. M. 1921; amd. Sec. 6, Ch. 229, L. 1967.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

82-1210. (2744) **Repealed.**

Repeal

This section (Sec. 7, Ch. 148, L. 1911), relating to fire marshal's investigations, was repealed by Sec. 14, Ch. 229, Laws 1967.

82-1211. (2745) **Penalty for violation of law.** Any person who fails to comply with the requirements of section 82-1209, R.C.M. 1947, shall be fined not less than twenty-five dollars ($25) nor more than two hundred dollars ($200).

History: En. Sec. 8, Ch. 148, L. 1911; re-en. Sec. 2745, R. C. M. 1921; amd. Sec. 7, Ch. 229, L. 1967.

Amendments

The 1967 amendment substituted "Any person who fails to comply with the requirements of section 82-1209, R. C. M. 1947" for "An officer named in the last two preceding sections who neglects to comply with any requirements of this chapter"; and made minor changes in style.

82-1218. (2752) **Entering of buildings for purpose of examination.** The state fire marshal, his deputies and subordinates, the chief of the fire department of each municipality or district where a fire department is estab-

lished, or the county sheriff where no fire department exists, at all reasonable hours may enter into all buildings and upon all premises within their jurisdiction for the purpose of determining whether the building or premise conforms to laws and rules relating to fire hazards and fire safety.

History: En. Sec. 15, Ch. 148, L. 1911; re-en. Sec. 2752, R. C. M. 1921; amd. Sec. 8, Ch. 229, L. 1967.

Amendments

The 1967 amendment substituted "municipality or district" for "city or village" before "where a fire"; substituted "county sheriff" for "mayor of a city or village" before "where no fire"; deleted "or the justice of the peace of a township in territory without the limits of a city or village" before "at all reasonable hours"; and substituted "determining whether the building or premise conforms to laws and rules relating to fire hazards and fire safety" for "examination" at the end of the section.

82-1227, 82-1228. (2757, 2758) **Repealed.**

Repeal

These sections (Secs. 20, 21, Ch. 148, L. 1911), relating to the compensation of fire department officials, were repealed by Sec. 14, Ch. 229, Laws 1967.

CHAPTER 13—GOVERNOR—POWERS—RECORDS—SECRETARY

82-1309. Enemy attack upon United States and governor, etc.

Cross-References

Line of succession extended to legislators, sec. 82-3802.

82-1310. Emergency temporary seat of government—designation.

Cross-References

Moving seat of government after attack, sec. 82-3807.

CHAPTER 15—HAIL INSURANCE, STATE BOARD OF

Section
82-1516. Appointment of appraisers in case of dissatisfaction with official adjustment.
82-1519. Compensation of chairman and officers—financial report.

82-1516. (360) **Appointment of appraisers in case of dissatisfaction with official adjustment.** (1) In case the party that has sustained the loss is dissatisfied with and refuses to accept the adjustment made by the official appraiser then he shall have the right to appeal to the state board of hail insurance, provided however, he shall make such appeal by registered mail within ten (10) days after receiving the adjustment offer of the state board in writing. Also it is further provided that the state board of hail insurance may require the posting of a cash bond of ten dollars ($10) with the request for reappraisal of the first adjustment. In cases where the board requires the posting of the ten dollar ($10) bond, the board may retain it if no increase is allowed. If an increase is obtained, the board will return the bond to the claimant. In case the adjuster who makes the second appraisal fails to secure an agreement the claimant may

at his option submit the matter to arbitration as herein provided or sue the state board of hail insurance in the district court of the county where the loss occurred within ninety (90) days from the date of receipt of written notice of the second appraisal. Such actions shall be trials de novo and the Montana Rules of Civil Procedure shall apply. If the claimant elects to submit the matter to arbitration he shall then appoint one disinterested person as appraiser, and the official appraiser shall appoint another person as appraiser, and the two shall select a third disinterested person and the three shall then proceed to adjust the loss in the same manner as specified in section 82-1515 and the judgment of the majority shall be the judgment of said appraisers and shall be binding upon both parties as the final determination of said loss; provided, however, that if the insured does not recover a greater sum than allowed by the official appraiser in the first instance, he shall pay the expenses of the said three appraisers and their witnesses in making said adjustment, but if he is awarded a larger sum then the same shall be paid by the state board of hail insurance.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 9, Ch. 169, L. 1917; amd. Sec. 6, Ch. 34, L. 1919; re-en. Sec. 360, R. C. M. 1921; amd. Sec. 10, Ch. 40, L. 1923; amd. Sec. 4, Ch. 33, L. 1949; amd. Sec. 1, Ch. 69, L. 1963; amd. Sec. 76, Ch. 147, L. 1963; amd. Sec. 1, Ch. 170, L. 1967.

Amendments

The 1967 amendment added "within ninety (90) days from the date of receipt of written notice of the second appraisal" at the end of the fifth sentence of subsection (1).

82-1519. (363) **Compensation of chairman and officers—financial report.** It shall be the duty of all public officers to perform the duties relative to hail insurance under this act, without other compensation than that allowed by law. The chairman of the state board of hail insurance shall receive a salary in such amount as may be specified by the legislative assembly in the appropriation to the board of hail insurance and all appointed officers and employees under this act shall be allowed the per diem and mileage allowed state employees. The compensation of all appointed officers and employees of the board shall be fixed by the state board of hail insurance. If the legislative assembly does not specify the maximum salary for the head of the agency, the salary shall be fixed by the state board of hail insurance after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry.

The chairman of the state board of hail insurance shall each year submit a full financial report of the operations of the department to the governor of the state.

History: En. Sec. 12, Ch. 169, L. 1917; amd. Sec. 2, Ch. 183, L. 1921; re-en. Sec. 363, R. C. M. 1921; amd. Sec. 12, Ch. 40, L. 1923; amd. Sec. 1, Ch. 165, L. 1929; amd. Sec. 1, Ch. 53, L. 1951; amd. Sec. 1, Ch. 165, L. 1961; amd. Sec. 1, Ch. 188, L. 1965; amd. Sec. 11, Ch. 237, L. 1967.

Amendments

The 1967 amendment substituted "in such amount * * * of hail insurance" for "not in excess of six hundred dollars ($600) per month" in the second sentence, and added the last two sentences in the first paragraph.

CHAPTER 19—PURCHASING DEPARTMENT AND AGENT

Section
82-1916. Printing and publications.
82-1925.1. State board of equalization to determine residency of contractor—endorsement upon license—applications for redetermination of residency—furnishing lists—board's determination as prima facie evidence.
82-1927. Restriction on submitting additional bids when working beyond contract time.
82-1928. Excusable delays not considered working beyond contract time.

82-1916. (293.6) **Printing and publications.** The state purchasing agent shall have exclusive power, subject to the consent and approval of the governor, to contract for all printing for any purpose used by the state of Montana in any state office, elective or appointive or by any state board, commission, bureau, state institution or department except the printing of the decisions of the supreme court as provided in section 82-2004, and shall supervise and attend to all public printing of the state of Montana in the manner in this act provided, and shall prevent duplication and unnecessary printing; all forms, blanks and documents printed for distribution to the departments of the state government or state institutions shall be serially numbered and indexed by the state purchasing agent and sample copies of each thereof permanently retained in his office; and the state purchasing agent shall from time to time furnish to the public general information as to the nature, description and official numbers of such reports as are available for public distribution.

Unless otherwise provided by law, the state purchasing agent in letting contracts as provided in this act, for the printing, binding and publishing of all laws, journals and reports of the various offices, departments, boards, commissions and institutions of the state, shall have the power to determine the quantity, quality, style and grade of all such printing, binding and publishing.

Provided, that all reports of any department or institution of the executive branch for any fiscal year required by law to be published, must be submitted to the governor before November 1st, of each year, for approval, correction or modification, and when by the governor approved, as corrected or modified, must by him be certified to the state purchasing agent for publication, provided, the governor may require all such reports or any number of them, to be published in one volume, such publication to be completed on or before the tenth day of January thereafter. Such reports shall be confined to a factual presentation to the governor and legislature of the activities of the department concerned and any recommendations of the department head and shall be 8½ x 11 inches in outside dimension and shall employ single color covers only.

And provided further, any such reports so published, in one volume may also be separately published in pamphlet form, in such number as may be directed by the governor.

The reports shall be distributed by the department responsible for making the report. Such distribution shall be within the discretion of the head of the department making the report, but the following distribution shall be mandatory:

To the governor—as many as he desires, but not less than two (2) copies of each report.

To the secretary of state—two (2) copies of each report.

To the legislative council—two (2) copies of each report.

To the librarian of the state historical library—two (2) copies of each report.

To the legislative assembly of the state of Montana—one (1) copy for each member.

To the state publications distribution center of the state library, at least four (4) copies of each report and whatever additional copies are requested by the state library.

History: En. Sec. 6, Ch. 66, L. 1923; amd. Sec. 7, Ch. 80, L. 1961; amd. Sec. 9, Ch. 261, L. 1967.

Compiler's Notes

Section 82-2004, referred to in the first paragraph of this section, was repealed by Sec. 2, Ch. 305, Laws 1967. For present law dealing with the style and publication of supreme court reports, see sec. 82-2002.

Amendments

The 1967 amendment, in the subparagraph beginning "To the librarian," substituted "two (2) copies of each report" for "forty (40) copies of printed reports and a minimum of four (4) copies of mimeographed or carbon reports"; and deleted the following two paragraphs which read, "The historical society of Montana shall distribute publications so received to the public libraries, and other educational, scientific, library or art institutions of the state, which may apply to be put on the mailing list for all or a portion of the state publications; and to such libraries and other institutions outside this state with which the historical society of Montana may have established exchange relations" and "The historical society of Montana shall transmit to the United States Library of Congress, two (2) copies of every administrative report or study"; and added the last subparagraph.

Cross-References

State publications distribution center, secs. 44-132 to 44-139.

82-1925.1. State board of equalization to determine residency of contractor—endorsement upon license—applications for redetermination of residency—furnishing lists—board's determination as prima facie evidence. It shall be the duty of the state board of equalization of the state of Montana, at the time that a public contractor makes application for a license under the provisions of chapter 35, Title 84 of this code, to determine whether or not such contractor is a "resident" of the state of Montana within the meaning of sections 82-1924 and 82-1925. The board shall endorse upon the contractor's license whether or not such contractor is a "resident" as aforesaid. If a contractor is not a "resident" at the time such license is issued, but thereafter qualifies as such, he may apply to the board of equalization for a redetermination of his residency, and, if found to qualify as a "resident," the board shall endorse such fact upon his license, together with the date of such qualification. It shall be the duty of the state board of equalization, upon written request of any board, commission, officer or individual charged by law with the responsibility for the execution of any contract subject to the provisions of section 82-1924 on behalf of the state, board, commission, political subdivision, agency, school district or public corporation of the state of Montana, to furnish a list of contractors who have qualified as "residents," as aforesaid, to such requesting body. The determination of the board of equalization that a public contractor is or is not a "resident" within the meaning of sections 82-1924 and 82-1925 shall be prima facie evidence of such fact.

History: En. Sec. 1, Ch. 217, L. 1967.

Title of Act

An act providing for the determination by the board of equalization of the state of Montana of whether a bidder on public contracts is a "resident" within the meaning of sections 82-1924 and 82-1925, Revised Codes of Montana, 1947.

Separability Clause

Section 2 of Ch. 217, Laws 1967 read "If any part of this act shall be held to be unconstitutional or invalid by a court of competent jurisdiction, it is the intent of the legislative assembly that all valid parts that are severable from the invalid part remain in effect."

82-1927. Restriction on submitting additional bids when working beyond contract time. A public contractor, as defined in section 84-3501, R.C.M. 1947, who has been awarded a contract by the state of Montana, or any board, commission or department thereof, or by any board of county commissioners, or by any city or town council, or agency thereof, for the construction or reconstruction of a public work, and is working beyond the contract time (including any authorized time extensions) shall not submit any additional bids or proposals, nor enter into any additional contract with any public agency of the state of Montana, county, or city thereof, until he has completely executed the contract upon which he is working beyond contract time, and all supplemental agreements thereto.

History: En. Sec. 1, Ch. 141, L. 1967.

Title of Act

An act to provide that a public contractor who is working over the contract time on a previously awarded contract from the state of Montana, or any board, commission or department thereof, or from any board of county commissioners, or from any city or town council, or agency thereof, may not submit any additional bids or proposals to any of the above-mentioned agencies until he has completely executed the present contract upon which he is working beyond contract time; amending section 84-3507, R. C. M. 1947.

82-1928. Excusable delays not considered working beyond contract time. A public contractor shall not be considered to be working beyond contract time if the delay is caused by an accident or casualty produced by physical cause which is not preventable by human foresight, i.e., any of the misadventures termed an "Act of God."

History: En. Sec. 2, Ch. 141, L. 1967.

CHAPTER 20—REPORTERS OF DECISIONS OF SUPREME COURT—PUBLICATION AND DISTRIBUTION OF REPORTS

Section
82-2002. Duties of reporters.

82-2002. (379) **Duties of reporters.** The reporters of the decisions of the supreme court shall make careful and accurate reports of the cases decided by the supreme court. The reports of such cases shall be made under the supervision of, and pursuant to rules and regulations promulgated by the justices of the supreme court. Reports of all cases shall be furnished to the West Publishing Company for inclusion in their publication, the Pacific Reporter, and to any other private printing or duplicating concern requesting such reports for publication. The board of examiners, on request of the supreme court, shall contract with a publishing house to publish volumes of reports, the style, size and format thereof to be determined by the justices, and such board shall in such event prepare

and issue a call for bids and in accordance with the terms and specifications of the call, enter into a contract with the lowest and best bidder.

History: En. Sec. 891, Pol. C. 1895; re-en. Sec. 307, Rev. C. 1907; re-en. Sec. 379, R. C. M. 1921; amd. Sec. 1, Ch. 174, L. 1947; amd. Sec. 1, Ch. 14, L. 1961; amd. Sec. 1, Ch. 305, L. 1967.

Amendments

The 1967 amendment added the last two sentences.

Repealing Clause

Section 2 of Ch. 305, Laws 1967 read "Sections 82-2003, 82-2004, 82-2005 and 82-2006, Revised Codes of Montana, 1947, are hereby repealed."

82-2003 to 82-2006. (380 to 383) Repealed.

Repeal

These sections (Secs. 892 to 895, Pol. C. 1895; Secs. 1 to 3, Ch. 1, L. 1925; Sec. 1, Ch. 111, L. 1943; Sec. 1, Ch. 139, L. 1947; Sec. 2, Ch. 14, L. 1961), relating to the style and title of supreme court reports, were repealed by Sec. 2, Ch. 305, Laws 1967.

CHAPTER 27—CO-ORDINATOR OF INDIAN AFFAIRS

Section
82-2702. Office of state co-ordinator of Indian affairs created—appointment of co-ordinator—term—salary—office.

82-2702. Office of state co-ordinator of Indian affairs created—appointment of co-ordinator—term—salary—office. The office of the state co-ordinator of Indian affairs is hereby created. The co-ordinator shall be appointed by the governor from a list of five (5) qualified persons agreed upon by the tribal councils of the respective Indian tribes of the state of Montana. He shall hold such office for a term of four (4) years and shall be paid a salary in such amount as may be specified by the legislative assembly in the appropriation to the co-ordinator of Indian affairs. If the legislative assembly does not specify the maximum salary for the co-ordinator, any increase in the salary of the co-ordinator must be approved by the board of examiners. Before approving any salary increase the board of examiners shall review the salaries of comparable positions in Montana state government, other states and private industry. He shall maintain his office at the state capitol in Helena, Montana.

History: En. Sec. 2, Ch. 203, L. 1951; amd. Sec. 12, Ch. 237, L. 1967.

Amendments

The 1967 amendment substituted "salary in such amount * * * and private industry" for "salary of one dollar ($1.00) per year."

CHAPTER 30—NATURAL RESOURCES AND DEVELOPMENT COUNCIL

Section
82-3001. Creation of interdepartmental advisory council.

82-3001. Creation of interdepartmental advisory council. There is hereby created an interdepartmental advisory council, to be known as the council on natural resources and development (hereinafter referred to as the "council"). It shall be composed of the following: The commissioner of state lands and investments, director of the department of state fish

and game, state forester, secretary of the grass conservation commission, director of the Montana water resources board, executive secretary of the oil and gas conservation commission, director of the state bureau of mines and geology, state highway engineer, commissioner of agriculture, executive officer of the state board of health, director of planning and economic development, and executive secretary of the state soil conservation committee.

History: En. Sec. 1, Ch. 95, L. 1953; amd. Sec. 4, Ch. 280, L. 1965; amd. Sec. 1, Ch. 230, L. 1967.

Amendments

The 1967 amendment substituted "director of the department of state fish and game" for "state game warden"; substituted "director of the Montana water resources board" for "a person designated by the state water conservation board"; substituted "the oil and gas conservation commission" for "the oil conservation board"; deleted "and" after "geology"; added "commissioner of agriculture * * * soil conservation committee" at the end of the section; and made a minor change in punctuation.

CHAPTER 33—DEPARTMENT OF ADMINISTRATION

Section

82-3306. Supervision of mailing facilities—data processing, computer, duplicating, copying, and automatic typing facilities.
82-3316. Authority to construct buildings.

82-3306. Supervision of mailing facilities—data processing, computer, duplicating, copying, and automatic typing facilities. (1) The controller shall maintain and supervise any central mailing facilities for state agencies in the capitol area.

(2) The controller shall establish regulations governing the procurement of data processing equipment, duplicating and copying equipment, and equipment generally prescribed for automatic typing. The regulations of the state controller shall be formulated with the advice of a committee consisting of the budget director, a representative of the board of regents, a representative of the state highway commission, and two (2) members appointed by the other three, and one (1) of the appointed members shall have special knowledge or experience with data processing equipment and one (1) shall have special knowledge or experience with the other named office equipment. Within these regulations the controller shall supervise the procurement and location of the herein named equipment for all state agencies, other than the department of public instruction.

History: En. Sec. 6, Ch. 271, L. 1963; amd. Sec. 1, Ch. 298, L. 1967.

Amendments

The 1967 amendment numbered the original paragraph of the section "(1)"; and added subsection (2).

82-3316. Authority to construct buildings. (1) Except as provided in subsection (2) of this section, a building costing more than twenty-five thousand dollars ($25,000) may not be constructed without the consent of the legislative assembly. When a building costing more than twenty-five thousand dollars ($25,000) is to be financed in such a manner as not to require legislative appropriation of moneys, such consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in section 75-216, if they are to be financed wholly from the revenues therein described.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private moneys, if the construction of such a building will not result in any new programs.

History: En. Sec. 16, Ch. 271, L. 1963; amd. Sec. 2, Ch. 13, L. 1967.

Amendments

The 1967 amendment substituted "may" for "shall" after "such consent" near the end of subsection (1); substituted "Montana university system" for "university of Montana" near the beginning of subsection (2)(b); substituted "revenue producing facilities referred to in section 75-216" for "residence halls, dormitories, apartments and other student housing facilities; dining rooms and halls and other food service facilities; and student union building and facilities" in subsection (2)(b); and added "if they are to be financed wholly from the revenue therein described" at the end of subsection (2)(b).

Effective Date

Section 3 of Ch. 13, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 2, 1967.

CHAPTER 35—COMMITTEE ON PROBLEMS OF AGING

Section
82-3501. Commission created.
82-3502. Composition of commission—appointment and terms of members.
82-3503. Quorum of commission—officers—meetings.
82-3504. Functions of commission.
82-3505. Grants and gifts to commission—deposit and availability.
82-3506. Report to governor and legislative assembly.

82-3501. Commission created. There is hereby created the commission on aging, hereafter called "the commission."

History: En. Sec. 1, Ch. 73, L. 1965; amd. Sec. 1, Ch. 12, L. 1967.

Amendments

The 1967 amendment substituted "commission on aging" for "committee on problems of aging" near the beginning of the section and substituted "commission" for "committee" at the end of the section.

82-3502. Composition of commission—appointment and terms of members. The commission shall consist of fifteen (15) members appointed by the governor as follows: One (1) member each from the following offices: state board of health, department of public institutions, Montana medical association, public employees' retirement system, department of public welfare, Montana nurses association, Montana nursing home association, the legislative assembly. Seven (7) citizen members shall be selected on the basis of active interest, experience and ability, none of whom shall be employees of the state. Five (5) commission members shall be appointed initially for terms of one (1) year; five (5) shall be appointed initially for terms of two (2) years, five (5) shall be appointed initially for terms of three (3) years. An appointment to replace a member whose term has

expired shall be for three (3) years. An appointment to replace a member whose term has not expired shall be for the remainder of the term.

History: En. Sec. 2, Ch. 73, L. 1965; amd. Sec. 2, Ch. 12, L. 1967.

Amendments

The 1967 amendment substituted "commission" for "committee" wherever it appears in the section.

82-3503. Quorum of commission—officers—meetings. A majority of the members of the commission shall constitute a quorum for the transaction of business. The commission shall elect a chairman, a vice-chairman, a secretary and such other officers as it deems necessary. The commission shall meet on call of the chairman of the commission or the governor.

History: En. Sec. 3, Ch. 73, L. 1965; amd. Sec. 3, Ch. 12, L. 1967.

Amendments

The 1967 amendment substituted "commission" for "committee" wherever it appears in the section.

82-3504. Functions of commission. The commission shall: 1. to 4. * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 73, L. 1965; amd. Sec. 4, Ch. 12, L. 1967.

Amendments

The 1967 amendment substituted "The commission" for "The committee" at the beginning of the section.

82-3505. Grants and gifts to commission—deposit and availability. The commission may receive on behalf of the state any grant from the federal government or any grant or gift from any source and accept the same so that the title shall pass to the state. All grants, grants-in-aid, or gifts shall be deposited with the state treasurer and shall be continuously available to the commission.

History: En. Sec. 5, Ch. 73, L. 1965; amd. Sec. 5, Ch. 12, L. 1967.

Amendments

The 1967 amendment substituted "commission" for "committee" wherever it appears in the section.

82-3506. Report to governor and legislative assembly. The commission shall report to the governor and legislative assembly prior to the end of each even-numbered year.

History: En. Sec. 6, Ch. 73, L. 1965; amd. Sec. 6, Ch. 12, L. 1967.

Amendments

The 1967 amendment substituted "The commission" for "The committee" at the beginning of the section.

Effective Date

Section 7 of Ch. 12, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 2, 1967.

CHAPTER 36—MONTANA ARTS COUNCIL

Section
82-3601. Montana arts council created—purposes.
82-3602. Appointment of council members—qualifications.
82-3603. Terms of council members—chairman and vice-chairman—vacancies—expenses of members.
82-3604. Executive committee—functions.
82-3605. Employment of officers and employees—compensation.

82-3606. Duties of council.
82-3607. Gifts and donations received—deposit and use.
82-3608. Contracts for services and co-operative endeavors.
82-3609. Fund-raising drives—deposit and use of proceeds.

82-3601. Montana arts council created—purposes. In recognition of the increasing importance of the arts in the lives of the citizens of Montana, of the need to provide opportunity for our young people to participate in the arts and to contribute to the great cultural heritage of our state and nation, and of the growing significance of the arts as an element which makes living and vacationing in Montana desirable to the people of other states, the Montana arts council is hereby created as an agency of state government.

History: En. Sec. 1, Ch. 2, L. 1967. Title of Act

An act creating the Montana arts council and prescribing its powers and duties.

82-3602. Appointment of council members—qualifications. The Montana arts council shall consist of fifteen (15) members appointed by the governor, by and with the consent of the senate. In so far as possible, the governor shall appoint members from the various geographical areas of the state who have a keen interest in one or more of the arts and a willingness to devote time and effort in the public interest without compensation.

History: En. Sec. 2, Ch. 2, L. 1967.

82-3603. Terms of council members—chairman and vice-chairman—vacancies—expenses of members. The term of office of each member shall be five (5) years; provided, however, that of the members first appointed, five (5) shall be appointed for terms of one (1) year, five (5) for terms of three (3) years, and five (5) for terms of five (5) years. The governor shall designate a chairman and a vice-chairman from the members of the council to serve as such at the pleasure of the governor. The chairman shall be the chief executive officer of the council. Other than the chairman, no member of the council who serves a full five (5) year term shall be eligible for reappointment during a one (1) year period following the expiration of his term. Each vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. The members of the council shall not receive any compensation for their services, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as members of the council.

History: En. Sec. 3, Ch. 2, L. 1967.

82-3604. Executive committee—functions. The council may select an executive committee of five (5) members and delegate to the committee such functions in aid of the efficient administration of the affairs of the council as the council deems advisable.

History: En. Sec. 4, Ch. 2, L. 1967.

82-3605. Employment of officers and employees—compensation. The chairman may employ, and at pleasure remove, administrative officers and

other employees as may be needed and fix their compensation within the amounts made available for such purposes.

History: En. Sec. 5, Ch. 2, L. 1967.

82-3606. Duties of council. The duties of the council shall be:

(1) To encourage throughout the state the study and presentation of the arts and to stimulate public interest and participation therein;

(2) To co-operate with public and private institutions engaged within the state in artistic and cultural activities, including but not limited to, music, theatre, dance, painting, sculpture, architecture and allied arts and crafts and to make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;

(3) To foster public interest in the cultural heritage of our state and to expand the state's cultural resources;

(4) To encourage and assist freedom of artistic expression essential for the well-being of the arts;

(5) To report to the governor and the legislature prior to the end of each even-numbered year. The report shall include a statement of all important activities and transactions of the council, with suggestions and recommendations for the better realization of the purposes of the council and the healthy growth and development of the arts in Montana.

History: En. Sec. 6, Ch. 2, L. 1967.

82-3607. Gifts and donations received—deposit and use. The council may acquire, accept, receive, dispose and administer in the name of the council any gifts, donations, properties, securities, bequests and legacies that may be made to it. Moneys received by donation, gift, bequest or legacy, unless otherwise provided by the donor, shall be deposited in the earmarked revenue fund of the state treasury and used for the general operation of the council. The council is the official agency of the state to receive and disburse any funds made available by the National Foundation on the Arts.

History: En. Sec. 7, Ch. 2, L. 1967.

82-3608. Contracts for services and co-operative endeavors. The council may contract with individuals, organizations and institutions for services or co-operative endeavors furthering the objectives of the council's programs.

History: En. Sec. 8, Ch. 2, L. 1967.

82-3609. Fund-raising drives—deposit and use of proceeds. The council may engage in such fund-raising drives and public contribution campaigns as will contribute to its continued development and support. All revenues received in such manner shall be deposited in the earmarked revenue fund of the state treasury and may not be used for any purposes other than the improvement, development and operation and programs of the council.

History: En. Sec. 9, Ch. 2, L. 1967.

Effective Date

Section 10 of Ch. 2, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved January 19, 1967.

CHAPTER 37—PLANNING AND ECONOMIC DEVELOPMENT ACT

Section
82-3701. Short title.
82-3702. Declaration of necessity and public policy.
82-3703. Planning and economic development commission.
82-3704. Executive head of department—appointment—compensation.
82-3705. Functions of department.
82-3706. Contracts and agreements for projects and programs—co-operation with other agencies.
82-3707. Administrators of sections of department—appointment of personnel.
82-3708. Annual report by commission.
82-3709. Planning board abolished—records, property and moneys transferred.

82-3701. Short title. This act shall be known and may be cited as the "Montana Planning and Economic Development Act of 1967."

History: En. Sec. 1, Ch. 19, L. 1967.

Title of Act

An act creating a planning and economic development commission and a department of state government to foster planning, growth and diversification of industry and commerce; abolishing the planning board; and repealing sections 89-301 through 89-309, R. C. M. 1947.

82-3702. Declaration of necessity and public policy. It is hereby declared to be a necessity and the public policy of the state of Montana to promote, stimulate and encourage the planning and development of the economy of the state in order to provide for the social and economic prosperity of its citizens. Such promotion and development of industry, commerce, agriculture, labor and natural resources of the state requires that cognizance be taken of the continuing migration of people to the urban areas in search of job opportunities, and the fact that Montana is making a needed transition to a diversified economy. Community planning, greater diversification and attraction of additional industry, accelerated development of natural resources, expansion of existing industry, creation of new uses for agricultural products, greater emphasis on scientific research, development of new markets for the products of the state and the attainment of a proper balance in the over-all economic base are all necessary in order to create additional employment opportunities, increase personal income and promote the general welfare of the people of this state. The planning and economic development commission and department hereinafter created shall be regarded as performing a governmental function in carrying out the provisions of this act.

History: En. Sec. 2, Ch. 19, L. 1967.

82-3703. Planning and economic development commission. There is hereby created a department of state government to be known as the "department of planning and economic development," of which the governing board shall be a commission designated as the "planning and development commission." The commission shall consist of seven (7) members, and the governor shall be an ex officio member thereof. The governor shall appoint a chairman of the commission as provided hereafter. The other five (5) members of the commission shall be appointed by the governor, shall represent various community and economic interests, and shall be residents and qualified electors of the state. On or before the effective date of this act, the governor shall appoint one (1) member whose term

of office shall expire on May 1, 1968, one (1) member whose term of office shall expire on May 1, 1969, one (1) member whose term of office shall expire on May 1, 1970, one (1) member whose term of office shall expire on May 1, 1971, and one (1) member whose term of office shall expire on May 1, 1972. Except appointments to fill unexpired terms, each appointment thereafter shall be for a period of five (5) years. Members of the commission may be removed by the governor, and any vacancy caused by death, removal, disqualification or resignation shall be filled by appointment as hereinabove provided.

The commission shall select from its membership a vice-chairman, a secretary, and such other officers as it may determine to be necessary. The commission shall adopt such rules and regulations for the discharge of its duties as it may from time to time deem necessary, and each member except the governor and the chairman of the commission shall receive the sum of fifteen dollars ($15.00) per day for each day actually engaged in the performance of the duties of office, and shall be reimbursed for actual and necessary expenses incurred in the performance of the duties of office. The commission is empowered to exercise general supervision of the department, shall establish policy, and shall approve programs undertaken.

History: En. Sec. 3, Ch. 19, L. 1967.

82-3704. Executive head of department—appointment—compensation. The executive head of the department is the chairman of the commission, who shall be appointed by the governor, with the consent of the senate, and shall hold office at the pleasure of the governor. The chairman of the commission shall receive such compensation as is fixed by the legislature.

History: En. Sec. 4, Ch. 19, L. 1967.

82-3705. Functions of department. The department shall serve as the agency of state government in developing the full potential of the state's human and natural resources. To this end the department shall perform the following functions:

(A) State Planning.

(1) Develop and adopt a comprehensive plan for the physical development of the state of Montana.

(2) Make such economic and social studies as may be needed to accomplish the purposes of this act.

(3) Co-ordinate and assist regional development groups in the comprehensive development of the resources of the region to the betterment of Montana.

(4) Assemble and correlate information for the purpose of making long-range plans for economic and resource development of the state and its subdivisions relating to all of the factors which influence the development of new and existing economic enterprises, including taxes and the regulation of industry.

(5) Provide advice and assistance to Montana business and labor in the field of economic development and bring to the attention of the gov-

ernor those significant problems adversely affecting economic development which may be relieved by state action.

(6) Locate and maintain information on prime sites for industrial, agricultural, mineral, forestry, commercial, and residential development and on sites of historical importance, and make recommendations for protecting and preserving such sites.

(7) Apply for, accept and administer grants from the federal government or other public or private sources to accomplish the objectives of this act, and enter into contracts, including agreements with adjoining states, with respect to planning involving adjoining states.

(8) Serve as the consultative, co-ordinating, and advisory agency for state departments, officials, and agencies in state planning and for encouraging and aiding local planning bodies, either directly or by securing planning assistance, consulting services and technical aid, which may include land use, demographic and economic studies and surveys, and comprehensive plans.

(B) Community Development.

(1) Co-operate with and provide technical assistance to county, municipal, state and regional planning commissions, zoning commissions, parks or recreation boards, community development groups, community action agencies, and similar agencies created for the purposes of aiding and encouraging orderly productive and co-ordinated development of the communities of the state.

(2) Assist the governor in co-ordinating the activities of state agencies which have an impact on solution of community development problems and implementation of community plans.

(3) Serve as a clearinghouse for information, data, and other materials which may be helpful or necessary to local governments to discharge their responsibilities and provide information on available federal, state financial and technical assistance.

(4) Carry out continuing studies and analyses of the problems faced by communities within the state and develop such recommendations for administrative or legislative action as appear necessary. In carrying out such studies and analyses, the department shall pay particular attention to the problems of metropolitan, suburban, and other areas in which economic and population factors are rapidly changing.

(C) Recreational Development.

(1) Exercise state responsibility for that part of recreational planning and development which is directly related to private investment in recreational facilities.

(2) Assemble and correlate information which may influence the development of recreational enterprises and disseminates the same to persons, firms or corporations with bona fide interest in constructing or maintaining recreational facilities open to the public.

(D) Economic Development.

(1) Provide co-ordinating services to aid state and local groups in the promotion of new economic enterprises and conduct publicity and promotional activities in connection therewith.

(2) Collect and disseminate information regarding the advantages of developing agricultural, recreational, commercial and industrial enterprises within this state.

(3) Serve as the state's official liaison between persons interested in locating new economic enterprises in Montana and state and local groups seeking new enterprises.

(4) Aid communities interested in obtaining new business or expanding existing business.

(5) Study and promote means of expanding markets for Montana products.

(6) Encourage and co-ordinate public and private agencies or bodies in publicizing the facilities and attractions of the state.

History: En. Sec. 5, Ch. 19, L. 1967.

82-3706. Contracts and agreements for projects and programs—co-operation with other agencies. The department may contract for consulting services for the purpose of undertaking and conducting planning and study projects. It may make agreements with other state agencies in order to effectuate its own research programs. It may initiate research, but when possible shall make full use of and strengthen the research resources of other state agencies, including the university system. Other state agencies are directed to provide the department with such information as will assist it in carrying out the purposes of this act.

The department shall assist and co-operate with other state agencies and officials, with official organizations of elected officials in the state, with local governments and officials, and with federal agencies and officials, in carrying out the functions and duties of the department.

It may consult with private groups and individuals, and if the department deems it desirable, hold public hearings to obtain information for the purposes of carrying out this act.

History: En. Sec. 6, Ch. 19, L. 1967.

82-3707. Administrators of sections of department—appointment of personnel. Each division or section of the department may be under the management of an administrator, responsible to the chairman of the commission, and such administrators and all subordinate personnel of the department shall be appointed by the chairman of the commission, with the consent of the commission.

History: En. Sec. 7, Ch. 19, L. 1967.

82-3708. Annual report by commission. The commission shall prepare an annual report of its activities for the governor and the legislature and may issue and disseminate special reports concerning any phase of its work.

History: En. Sec. 8, Ch. 19, L. 1967.

82-3709. Planning board abolished — records, property and moneys transferred. The state planning board is abolished. All records, property and moneys of the state planning board are transferred to the planning and economic development commission.

History: En. Sec. 9, Ch. 19, L. 1967.

Repealing Clause

Section 10 of Ch. 19, Laws 1967 read "Sections 89-301, 89-302, 89-303, 89-304, 89-305, 89-306, 89-307, 89-308, and 89-309, R. C. M. 1947 are repealed."

CHAPTER 38—POST-ENEMY-ATTACK CONTINUITY IN GOVERNMENT

Section
82-3801. Citation of act—constitutional basis.
82-3802. Succession to governorship.
82-3803. Succession to boards of county commissioners.
82-3804. Succession in city or town governing bodies.
82-3805. Succession for city or town executives.
82-3806. Provision for quorum.
82-3807. Moving seat of state government.
82-3808. Moving seat of local government.
82-3809. Duration of operation of act.

82-3801. Citation of act—constitutional basis. This act may be cited as "The Post-Enemy-Attack Continuity in Government Act" and is in implementation of section 46, article V of the Montana constitution.

History: En. Sec. 1, Ch. 268, L. 1967.

Title of Act

An act to provide for post-enemy-attack continuity in government.

82-3802. Succession to governorship. Following an enemy attack, the line of succession to the office of governor, as set forth in section 16, article VII of the constitution of Montana, shall be extended to members of the legislative assembly in the order of their seniority. For purposes of this section the term "seniority" means the member who has served in the legislature for the longest continuous period of time up to and including his current term. If two (2) or more members of the legislative assembly have equal seniority, the line of succession among them shall be from eldest to youngest in age.

History: En. Sec. 2, Ch. 268, L. 1967.

82-3803. Succession to boards of county commissioners. In case of a vacancy on any board of county commissioners occurring during or following an enemy attack if the judge or judges of the judicial district in which the vacancy occurs be not available to make the appointment as provided in section 4, article XVI of the Montana constitution then the district judges of all other judicial districts shall be authorized to make such appointment, provided, however, that of the available judges in the state of Montana that judge who holds court in the county seat closest to the county seat where the vacancy occurs shall be responsible for making the appointment to fill the vacancy.

History: En. Sec. 3, Ch. 268, L. 1967.

82-3804. Succession in city or town governing bodies. In the event that no members of a city or town council or commission are available following an enemy attack then the board of county commissioners of the county in which such city or town is located shall appoint successors to act in place of the unavailable members.

History: En. Sec. 4, Ch. 268, L. 1967.

82-3805. Succession for city or town executives. In the event that the executive head of any city or town is unavailable, following an enemy attack, to exercise the powers and discharge the duties of his office, then those members of the city or town council or commission available shall, by majority vote, choose a successor to act as the executive head of such city or town.

History: En. Sec. 5, Ch. 268, L. 1967.

82-3806. Provision for quorum. If, following an enemy attack, the legislature or any state or local government council, board, or commission is unable to assemble a quorum as defined by the constitution of Montana or by statute then those legislators or members of the council, board, or commission available for duty shall constitute the legislature or board, or commission; and aforesaid quorum requirements shall be suspended; and, where the affirmative vote of a specified proportion of members for the approval of any action would otherwise be required, the same proportion of those voting thereon shall be sufficient.

History: En. Sec. 6, Ch. 268, L. 1967.

82-3807. Moving seat of state government. Following an enemy attack in which the seat of state government at Helena has been rendered unsuitable for use in that capacity the seat of state government may be moved to an alternate location within the boundaries of the state of Montana by proclamation of the governor. He shall consider other Montana cities in order of their population in the last federal census, giving consideration to available communications, office space and such other factors as may seem to him pertinent. Such move of the seat of government shall be effective until it is again moved by proclamation of the governor or action by the legislature.

History: En. Sec. 7, Ch. 268, L. 1967.

82-3808. Moving seat of local government. Following an enemy attack in which the seat of local government of any political subdivision of the state shall have been rendered unsuitable for use in that capacity, in the opinion of the governing body of that political subdivision, such seat of government may be moved by said governing body to such other location as they deem most suitable.

History: En. Sec. 8, Ch. 268, L. 1967.

82-3809. Duration of operation of act. The provisions of this act shall become inoperative at the time of the convening of the first legislative assembly following the emergency which originally made such provisions operative.

History: En. Sec. 9, Ch. 268, L. 1967.

CHAPTER 39—TELETYPEWRITER COMMUNICATIONS SYSTEM FOR LAW ENFORCEMENT

Section
82-3901. Establishment of communications system—inclusion of other state agencies.
82-3902. Appointment of communications committee—members—term of office—vacancies—meetings—compensation—duties.

82-3903. Powers of attorney general in carrying out provisions of act—operational charges—assessments.
82-3904. Participation in system by local and other agencies.
82-3905. Co-operation with federal law enforcement agencies—attorney general to enter agreements.
82-3906. Attorney general's report.

82-3901. Establishment of communications system—inclusion of other state agencies. The attorney general is hereby authorized to establish a law enforcement teletypewriter communications system for the purpose of connecting federal, state, county, and city law enforcement agencies by teletype, and is further authorized to bring into the network, should he and they so desire, any department of Montana state government or its subdivisions outside of law enforcement activities when, in the opinion of the attorney general and the state department or subdivision, such inclusion will materially aid the law enforcement agencies of the state of Montana or its subdivisions in the fight against crime.

History: En. Sec. 1, Ch. 1, Ex. L. 1967.

Title of Act

An act creating a state law enforcement teletypewriter communications system; providing for an administrative committee to administer the provisions of the act; providing for duties of the state attorney general in administering the act; providing for charges to be established and providing for disposition of moneys collected; providing for an appropriation to carry out the provisions of the act.

82-3902. Appointment of communications committee—members—term of office—vacancies—meetings—compensation—duties. To carry out the provisions of the act, the governor shall appoint a state law enforcement teletypewriter communications committee consisting of seven (7) members, each member representing a governmental entity which is participating in the communications system. Membership in the committee shall be as follows:

One (1) county sheriff from a county of the first class.

One (1) county sheriff from a county other than a first class county.

One (1) chief of police from a city of the first class.

One (1) chief of police from a city other than a first class city.

One (1) county commissioner from a county not otherwise represented.

One (1) city mayor from a city not otherwise represented.

One (1) officer or employee of a state department or agency which participates in the communications system.

The term of office of members appointed to the committee shall be as follows: Three (3) of the original appointees shall serve three (3) year terms, such terms to be determined by lot or drawing among the members present at the initial meeting of the committee, and the balance of the members of the committee shall serve for two (2) years each. Vacancies on the committee shall be filled immediately by the governor. The committee shall meet at such times and at such locations as the attorney general may require and may elect officers. Members shall serve without committee compensation since, by the nature of their duties and official capacities, they are full-time, paid, state or subdivision employees subject to compensation and certain travel and per diem allowances in connection with their positions. The committee shall advise the attorney general as

to the operation of the state law enforcement teletypewriter communications system, and shall suggest such changes as determined are necessary, and the attorney general shall, within the limits of the funds available under the provisions of this act, make every effort to effectuate the changes suggested, and shall work toward refinement of the system at all levels.

History: En. Sec. 2, Ch. 1, Ex. L. 1967.

82-3903. Powers of attorney general in carrying out provisions of act—operational charges—assessments. To carry out the provisions of this act, the attorney general is:

(a) Authorized to purchase, lease, or otherwise acquire facilities and equipment necessary to accomplish the purposes of this act, but only after consultation with the committee, and only upon approval of the committee regarding actual physical equipment to be purchased or leased as herein provided.

(b) The attorney general is authorized to employ such personnel as may be necessary to operate such facilities, within the framework of any funds budgeted or prorated on a charge basis against participating agencies as herein identified, but only after approval of the committee.

(c) The attorney general is hereby authorized to establish a monthly operational charge for the teletypewriter communications network, exclusive of personnel services, and such charge shall be prorated among all the various agencies using the system. Such charge shall be approved by the communications committee and shall be billed monthly to the agencies, and payments made as a result of the billing shall be remitted to the attorney general and shall be deposited by him in a special account in the state treasurer's office, and the state auditor is hereby authorized to draw warrants on this account upon request of the attorney general when such moneys are needed to pay any of the costs of keeping the system operative. A strict accounting shall be kept of all receipts and disbursements and shall be available as a matter of record to members of the appropriations committee of the house of representatives as they may require in the performance of their duties. Law enforcement agencies, other than state of Montana or any of its subdivisions, that become ninety (90) days delinquent in payment of any fees approved and assessed hereunder shall be notified that they will be removed from the network, and the committee herein provided shall take the necessary steps to carry out this provision.

(d) A special assessment pro rata shall be made against all participating agencies for personnel necessary to assist in the operation at one central location or key point at which there is a federal intertie, and this assessment shall be made monthly as is the operational assessment, and the same shall be transmitted and deposited and drawn by warrant as are other warrants as previously provided under (c) above, except that the assessment shall not be levied against the one central station for which the assessment is made. Assessments made under the provisions of this act shall be approved by the committee.

History: En. Sec. 3, Ch. 1, Ex. L. 1967.

82-3904. Participation in system by local and other agencies. Any county, city, or other law enforcement agency may, with approval of the committee and the attorney general, connect to the system and participate in it upon payment of, or agreement to pay, those costs established by the committee.

History: En. Sec. 4, Ch. 1, Ex. L. 1967.

82-3905. Co-operation with federal law enforcement agencies—attorney general to enter agreements. The attorney general is hereby directed to contact federal law enforcement agencies or officials relative to federal cost sharing in the teletypewriter communications system, and if such funds are available from federal sources, the attorney general is hereby authorized to sign agreements with the federal agencies, subject to approval of the communications committee, and any federal funds received in any biennium for which Montana funds have been appropriated shall be deposited to the credit of the communication fund and shall be used, if at all possible, to reduce the spending of moneys as herein appropriated from the general fund.

History: En. Sec. 5, Ch. 1, Ex. L. 1967.

82-3906. Attorney general's report. The attorney general shall prepare a report in detail covering the operations of the communications network, the actions of the committee, the accounting of all moneys received and expended, and the need to expand or improve the system, and shall submit such report to the appropriations committee of every legislative assembly at the time funds are requested for the administration of this act.

History: En. Sec. 6, Ch. 1, Ex. L. 1967.

Appropriation

Section 7 of Ch. 1, Ex. Laws 1967 appropriated money for the 1967-1969 biennium.

TITLE 83—STATE SOVEREIGNTY AND JURISDICTION

Chapter
9. Assignment of claims against state, 83-901 to 83-904.

CHAPTER 1—SOVEREIGNTY AND TERRITORIAL JURISDICTION OF THE STATE

83-108. (25) Jurisdiction over lands purchased by United States.

References

State ex rel. Parker v. District Court, — M —, 410 P 2d 459.

CHAPTER 9—ASSIGNMENT OF CLAIMS AGAINST STATE

Section
83-901. Notice to state auditor.
83-902. Limitations on assignment.
83-903. Power of state auditor to promulgate rules.
83-904. Effect of assignment.

83-901. Notice to state auditor. All transfers and assignments made of any claim against the state of Montana, or any part thereof, or interest thereon, except as hereinafter provided, shall be absolutely null and void and unenforceable against the state of Montana unless the assignee thereof files written notice of the assignment on such forms as may be required by the state auditor, together with a true copy of the instrument of assignment.

History: En. Sec. 1, Ch. 44, L. 1967.

Title of Act

An act to require assignees of moneys due from the state of Montana to file written notice of assignment and a copy of the assignment instrument with the state auditor; restricting multiple assignments; authorizing promulgation of rules and regulations for such assignments by the state auditor; and allowing deductions to be made from salaries of employees of the state for specified purposes.

83-902. Limitations on assignment. Unless otherwise expressly permitted by the state auditor, no more than one assignment of a claim shall be effective at one time, and no assignment shall be made to more than one party, except that an assignment may be made to one party as agent or trustee for two (2) or more parties. An assignment shall not be subject to further assignment.

History: En. Sec. 2, Ch. 44, L. 1967.

83-903. Power of state auditor to promulgate rules. The state auditor may promulgate rules and regulations regarding the form of assignment, the procedures for filing assignments, and the submission of claims covering assigned funds.

History: En. Sec. 3, Ch. 44, L. 1967.

83-904. Effect of assignment. Nothing contained herein shall in any way impair the negotiability of state warrants, nor preclude employees of the state of Montana from authorizing deductions from salaries for employees group insurance programs authorized by law, union dues, or purchase of U.S. government savings bonds.

History: En. Sec. 4, Ch. 44, L. 1967.

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VOLUME 5
Part 2
1967 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 5 (PART 2) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 5 (PART 2) THROUGH VOLUME 420, PACIFIC REPORTER (2ND SERIES)

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NEW LAWS IN VOLUME 5 (Part 2)

For index see pocket supplement to Replacement Volume 9

ENACTED IN 1967

Bank exemption from corporate license tax, 84-1501.4.
Banks with offices in more than one county, assessment, 84-4606.
Corporate tax liens, release, 84-1505.1.
Extraordinary levies, 84-4701.6.
Jeopardy assessments, income tax, 84-4928.1.
Mobile homes, registration when out-of-state, 84-6606, 84-6607.
Public contractors, withholding tax from payments, 84-3513 to 84-3516.

AMENDMENTS IN VOLUME 5 (Part 2)

Assessment of property, time, 84-406.
Cigarette tax, 84-5606, 84-5621.
Classification of property, 84-301.
Collection of taxes, 84-4130.
Corporation license tax, 84-1501, 84-1515.
Definition of terms, 84-101.
Equalization, state board, 84-702.
Gasoline tax, 84-1801.1, 84-1818, 84-1836 to 84-1838, 84-1840, 84-1842.
House trailers, 84-6601, 84-6604, 84-6605.
Income tax, 84-4901, 84-4902, 84-4913, 84-4920.1, 84-4931, 84-4938, 84-4946.
Migratory property, 84-6008.
Public contractors, licenses, 84-3501, 84-3505, 84-3507.
Strip coal mines license tax, 84-1302, 84-1303, 84-1304.

MONTANA REVISED CODES

TITLE 84—TAXATION

Chapter
1. Definition of terms, 84-101.
3. Classification of property for taxation—basis for taxation, 84-301.
4. Assessment of property—powers, duties and liability of county assessor, 84-406.
7. Equalization of taxes and administration and supervision of all tax laws by state board of equalization, 84-702.
13. License taxes—coal mines, 84-1302 to 84-1304.
15. License taxes—corporation license tax, 84-1501, 84-1501.4, 84-1505.1, 84-1515.
18. License taxes—gasoline dealers and distributors—special fuel tax, 84-1801.1, 84-1818, 84-1836 to 84-1838, 84-1840, 84-1842.
35. Licenses—public contractors, 84-3501, 84-3505, 84-3507, 84-3513 to 84-3516.
39. Uniform Federal Tax Lien Registration Act, Repealed—Section 8, Chapter 228, Laws of 1967.
41. Collection of general property taxes—tax sales—redemption—tax deeds—sale of tax deed lands, 84-4130.
46. Banks—taxation, 84-4606.
47. Cities and towns—taxation and license, 84-4701.6.
49. Income tax, 84-4901, 84-4902, 84-4913, 84-4920.1, 84-4928.1, 84-4931, 84-4938, 84-4946.
56. Cigarette tax—licenses—stamps, 84-5606, 84-5621.
60. Migratory personal property—taxation, 84-6008.
65. License taxes—racing associations, Repealed—Section 6, Chapter 216, Laws of 1967.
66. Property tax on house trailers, 84-6601, 84-6604 to 84-6607.

CHAPTER 1—DEFINITION OF TERMS

Section
84-101. Definition of terms.

84-101. (1996) **Definition of terms.** Whenever the terms mentioned in this section are employed in dealing with the subject of taxation, they are employed in the sense hereafter affixed to them.

First and Second. * * * [Same as parent volume.]

Third—The term "improvements" includes all buildings, structures, mobile homes, fixtures, fences, and improvements, including mobile homes, situated upon, erected upon or affixed to the land, whether title has been acquired to said land or not.

Fourth to Sixth. * * * [Same as parent volume.]

Seventh—The term "mobile home" means forms of housing known as "trailers," "house trailers" or "trailer coaches" exceeding eight (8) feet in width or thirty-two (32) feet in length designed to be moved from one place to another by an independent power connected thereto.

History: En. Sec. 4, p. 74, L. 1891; re-en. Sec. 3680, Pol. C. 1895; re-en. Sec. 2501, Rev. C. 1907; re-en. Sec. 1996, R. C. M. 1921; amd. Sec. 1, Ch. 99, L. 1939; amd. Sec. 1, Ch. 296, L. 1967. Cal. Pol. C. Sec. 3617.

Amendments

The 1967 amendment, in the paragraph beginning "Third," inserted "mobile homes" after "structures"; inserted "including mobile homes, situated upon" after "improvements"; and added the paragraph beginning "Seventh."

CHAPTER 2—PROPERTY SUBJECT TO TAXATION—BASIS FOR TAXATION

84-202. (1998) **Exemptions from taxation.**

"Educational Purposes"

The term "educational purposes," as used in section 2, article XII of the constitution and this section, exempting property used exclusively for "educational purposes" from taxation, is not defined in terms of common scholastic institutions of grammar school, high school and university or college. Organizations for the social, intellectual, physical, or religious welfare of the children are exempt equally. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Religious education is exempt as an "educational purpose" and not as "actual religious worship" even though elements of the latter may be present and may serve to strengthen the exemption of all the property. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

"Exclusive Use" Defined

The words "exclusive use" consistently have been held to mean the primary and inherent use and not the mere secondary or incidental uses of the property. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Exemption of Church Camp

Where church summer camp, containing twenty-two acres of land and twenty-eight improvements, was "exclusively used for educational purposes" within the meaning of this section and section 2, article XII of the Montana constitution, it was exempt from taxation. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Extent of Exemption

When exempting an institution of charity, sufficient residence and recreation area may also be exempt. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Limits of Public Charity

An institution of purely public charity, which is exempt from taxation under section 2, article XII of the constitution and this section, may be devoted to bringing people under religious influence, the beneficiaries of the charity may pay a small portion of the cost, and the activity may be limited to a particular class so long as the numbers who may participate remain somewhat indefinite. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

CHAPTER 3—CLASSIFICATION OF PROPERTY FOR TAXATION—BASIS FOR TAXATION

Section
84-301. Classification of property for taxation.

84-301. (1999) **Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. * * * [Same as parent volume.]

Class Two. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence; all agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes.

Class Three. Livestock, poultry and the unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith, except mobile homes; and all office or hotel furniture and fixtures.

Class Four. (a) All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five or Class Seven.

(b) Mobiles homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade.

Class Five. * * * [Same as parent volume.]

Class Six. Property formerly included in this class is now classified by section 84-308 of the Revised Codes of Montana, 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state board of equalization, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961 within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state board of equalization in such manner and form as may be required by said board.

(b) Freeport merchandise. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state board of equalization in such manner or form as may be required by said board.

The state board of equalization shall establish standards, rules and regulations for the guidance of county assessors and assessing freeport merchandise.

Class Eight. Any improvement on real property valued at not more than fifteen thousand dollars ($15,000), which is owned and actually occupied by a widow, with or without minor or dependent children, or by:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, or

(2) a widower sixty-five (65) years of age or older, whether with or without minor dependent children, or

(3) a widow with minor or dependent children regardless of age, or

(4) a recipient of retirement benefits not exceeding one hundred fifty dollars ($150) per month, if single, or two hundred fifty dollars ($250) per month if married. Provided such owner and occupier is not gainfully employed to such an extent as would render him or her ineligible for social security benefits, should he or she be otherwise eligible for such benefits, and does not have income from all sources, excluding retirement benefits as mentioned in (4) hereinabove, in excess of one thousand five hundred dollars ($1,500) per year. Provided, further, that one who applies for classification of property under this class must make an affidavit before the county assessor of the county in which said property is located, on a form as may be provided by the state board of equalization supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies such improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under this class.

Class Nine. All property not included in the eight (8) preceding classes.

History: En. Sec. 1, Ch. 51, L. 1919; amd. Sec. 1, Ch. 248, L. 1921; re-en. Sec. 1999, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1937; amd. Sec. 1, Ch. 107, L. 1941; amd. Sec. 1, Ch. 286, L. 1947; amd. Sec. 1, Ch. 45, L. 1951; amd. Sec. 1, Ch. 178, L. 1951; amd. Sec. 1, Ch. 88, L. 1957; amd. Sec. 1, Ch. 103, L. 1961; amd. Sec. 2, Ch. 239, L. 1961; amd. Sec. 1, Ch. 168, L. 1965; amd. Sec. 1, Ch. 215, L. 1967; amd. Sec. 1, Ch. 294, L. 1967; amd. Sec. 2, Ch. 296, L. 1967.

Compiler's Notes

This section was amended three times in 1967, once by Ch. 215, once by Ch. 294 and once by Ch. 296. None of the amendatory acts referred to or incorporated the changes made by the others. Since the three amendments do not appear to conflict, the compiler has made a composite section embodying the amendments made by the three 1967 acts.

Amendments

Chapter 215, Laws of 1967 deleted "with none other than his or her spouse, minor or dependent children, or persons not responsible for all or any part of the financial support of the affiant, and that the improvements are not used for income-producing purposes other than such purposes as are normally permitted in or on such improvements" after "occupies such improvements" in the next to last sentence of subparagraph (4) under Class Eight.

Chapter 294, Laws of 1967, in the subsection beginning "Class Seven" designated the first paragraph as "(a)," and added subdivision (b); in the subsection beginning "Class Eight" deleted "or" before "dependent" in subdivision (2); and made minor changes in style.

Chapter 296, Laws of 1967 in the paragraph beginning "Class Two," inserted "except mobile homes" after "vehicles of all kinds"; in the paragraph beginning

"Class Three," inserted "except mobile homes" after "used therewith" and in the paragraph beginning "Class Four," designated the first paragraph as subparagraph (a), and added subparagraph (b).

Effective Date

Section 2 of Ch. 215, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 1, 1967.

References

State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

84-302. (2000) **Basis for imposition of taxes.**

References

State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

CHAPTER 4—ASSESSMENT OF PROPERTY—POWERS, DUTIES AND LIABILITY OF COUNTY ASSESSOR

Section
84-406. Time of assessment—motor vehicles—mobile homes—livestock.

84-406. (2002) **Time of assessment—motor vehicles—mobile homes—livestock.** (1) The assessor must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in his county subject to taxation, except such as is required to be assessed by the state board of equalization, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at 12 midnight of the first Monday of March next preceding. He must also ascertain and assess all mobile homes arriving in his county after 12 midnight of the first Monday of March next preceding. The procedure provided by this section shall not apply to

(a) and (b). * * * [Same as parent volume.]

(c) Property defined in section 53-642 as "special mobile equipment" shall be subject to assessment of personal property taxes either on the date that application is made for a special mobile equipment plate, if that date falls between the first day of January and the first Monday of March, or on the first Monday of March.

(d) Mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade.

(2) The assessor must ascertain and assess all motor vehicles, except mobile homes, in his county subject to taxation as of January 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at 12 midnight of the first day of January in each year. Provided that such tax shall not be assessed against motor vehicles which constitute inventory of motor vehicle dealers as of January 1, but said vehicles, and all other motor vehicles brought into the state subsequent to January 1, as motor vehicle dealer's inventory, shall be assessed to their respective purchasers as of the dates said vehicles are registered by said purchasers, except as otherwise provided by section 32-3315. Goods, wares and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall continue to be assessed at full and true value as of the first Monday of March.

Except that this paragraph shall not apply to an applicant for registration or re-registration of a mobile home, nothing herein contained shall relieve the applicant for registration or re-registration of any other motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or re-registration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid.

(3) The assessed value of livestock being fed in feeding pens or enclosures on the first Monday in March may be computed by adding the value of livestock more than six (6) months of age being fed on the last day of each month since the last assessment date and dividing the sum by twelve (12).

History: En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907; re-en. Sec. 2002, R. C. M. 1921; amd. Sec. 3, Ch. 158, L. 1933; amd. Sec. 1, Ch. 30, L. 1935; amd. Sec. 9, Ch. 72, L. 1937; amd. Sec. 2, Ch. 256, L. 1955; amd. Sec. 2, Ch. 245, L. 1963; amd. Sec. 1, Ch. 86, L. 1965; amd. Sec. 2, Ch. 232, L. 1967; amd. Sec. 3, Ch. 290, L. 1967; amd. Sec. 3, Ch. 296, L. 1967. Cal. Pol. C. Sec. 3628.

Compiler's Notes

This section was amended three times in 1967, once by Chapter 232, once by Chapter 290 and once by Chapter 296. None of the amendatory acts mentioned either of the others and none incorporated the changes in substance made by the others. However, the amendments do not appear to conflict except in matters of form; hence the compiler has made a composite section embodying the changes made by all three amendatory acts. In so doing, the compiler has redesignated as (d) a paragraph (c) added to subsection (1) by Chapter 296, and has combined sentences added by Chapters 290 and 296 as the last sentence in the first paragraph of subsection (2).

Amendments

Chapter 232, Laws of 1967, added paragraph (c) to subsection (1) and made minor changes in style.

Chapter 290, Laws of 1967, added the second and third sentences to the first paragraph of subsection (2), except that Chapter 290 did not contain the words "and new mobile homes" now appearing in said third sentence; it also made minor style changes.

Chapter 296, Laws of 1967, inserted the second sentence in subsection (1); added to subsection (1) the paragraph now designated (d); inserted "except mobile homes" in the first sentence of subsection (2); added the sentence now appearing as the final sentence of the first paragraph of subsection (2), except that Chapter 296 did not contain the words "new motor vehicles and" now appearing therein; it also inserted "Except that this paragraph shall not apply to an applicant for registration or re-registration of a mobile home" at the beginning of the second paragraph of subsection (2); inserted "other" before "motor vehicle so assessed" in the second paragraph of subsection (2); and made minor style changes.

Effective Date

Section 3 of Ch. 232, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 1, 1967.

References

Swartz v. Berg, — M —, 411 P 2d 736.

CHAPTER 7—EQUALIZATION OF TAXES AND ADMINISTRATION AND SUPERVISION OF ALL TAX LAWS BY STATE BOARD OF EQUALIZATION

Section
84-702. Qualification and compensation.

84-702. (2122.2) **Qualification and compensation.** The persons to be appointed as members of the board of equalization shall be such as are known to possess knowledge of the subject of taxation and skill in matters pertaining thereto. No person so appointed shall hold any other office

under the laws of this state nor any other state, nor any office under government of the United States, or of any other state. He shall devote his entire time to the duties of the office and shall not hold any position of trust or profit, nor engage in any occupation or business interfering or inconsistent with his duties, or serve on or under any committee of any political party, or take part either directly or indirectly in any political campaign in the interest of any political party, or organization or candidate for office. Each member shall receive an annual salary in such amount as may be specified by the legislative assembly in the appropriation to the board of equalization. If the legislative assembly does not specify the maximum salary of board members, any increase in the salary of board members must be approved by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The salary shall be payable in equal monthly installments. The member elected chairman as provided for in 84-703 shall receive additional compensation of not more than five hundred dollars ($500) per annum payable in the same manner as the salary. He shall also be paid his actual traveling and other expenses when away from the capitol on official business.

History: En. Sec. 2, Ch. 3, L. 1923; amd. Sec. 1, Ch. 109, L. 1953; amd. Sec. 8, Ch. 225, L. 1963; amd. Sec. 13, Ch. 237, L. 1967.

Amendments

The 1967 amendment substituted the fourth, fifth and sixth sentences for a provision setting maximum salary at $10,000; and made minor style changes.

CHAPTER 13—LICENSE TAXES—COAL MINES

Section
84-1302. Strip coal mines license tax—amount—exceptions.
84-1303. Payment of annual license tax.
84-1304. Strip coal mine operators to file statements.

84-1302. (2317) **Strip coal mines license tax—amount—exceptions.** Every person engaged in or carrying on the business of strip coal mining, or engaged in the business of working or operating any strip coal mine or strip coal mining property, in the state of Montana, from which marketable or merchantable coal of any kind is extracted or produced by means of strip mining, whether such person shall carry on such business or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for the year 1921, and each year thereafter, when engaged in or carrying on such business, work or operations, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, work and operations, in an amount equal to five cents per ton for each and every ton in excess of fifty thousand tons of marketable or merchantable coal extracted or produced by means of strip mining by such person in the state of Montana and shipped by such person during such year, or used by such person for any purpose except in connection with the operating of the strip coal mine or mining property from which the same was extracted or produced, by means of strip mining or delivered

by such person to any other person for shipment, sale or use by such other person; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed, by any person to mine coal, or to work in or about, or in connection with any strip coal mine to pay such license taxes, nor shall any work required to be done in prospecting for, or in developing, or in opening up any strip coal mine or strip coal mining property, be deemed to be the carrying on of a strip coal mining business, or the engaging in the business of working or operating of a strip coal mine; provided, further, that if during any such work of developing or opening up any strip coal mine or strip coal mining property, any marketable or merchantable coal shall be extracted or produced by means of strip mining and sold, then the same shall be deemed the carrying on of a strip coal mining business and the engaging in the business of working and operating a strip coal mine.

History: En. Sec. 2, Ch. 155, L. 1921; re-en. Sec. 2317, R. C. M. 1921; amd. Sec. 1, Ch. 200, L. 1939; amd. Sec. 1, Ch. 244, L. 1967.

Amendments

The 1967 amendment inserted "strip" before "coal" in ten places; inserted "strip coal" before "mine" or "mining" in four places; deleted "mined" before "extracted" in four places; inserted "by means of strip mining" after "produced" in four places; and deleted "or coal property or business" before "to pay such license taxes."

84-1303. (2318) **Payment of annual license tax.** Such annual license tax shall be paid in quarterly installments for the quarters ending, respectively, March 31st, June 30th, September 30th, and December 31st in each year, beginning with the quarter ending March 31, 1921, and the amount of the license tax due for each such quarter shall be paid to the state treasurer within thirty days after the end of each such quarter provided that one-half (½) of the amounts reported to the state treasurer by the bureau of mines and geology as being the reasonable value of reclamation work performed by a licensee on lands on which strip mining has been conducted shall be credited to such licensee on the first quarterly payment of the license tax due after such report is received and on such subsequent quarterly payments until the licensee has received credit for the full amount thus reported.

History: En. Sec. 3, Ch. 155, L. 1921; re-en. Sec. 2318, R. C. M. 1921; amd. Sec. 5, Ch. 245, L. 1967.

Amendments

The 1967 amendment added the proviso.

84-1304. (2319) **Strip coal mine operators to file statements.** Each and every person engaged in or carrying on the business of strip coal mining, or engaged in the business of working or operating any strip coal mine or strip coal mining property in the state of Montana, from which coal of any kind is extracted or produced by means of strip mining at the date when this act becomes effective, must, not later than the thirtieth day of April, 1921, and every person who shall, after the date this act becomes effective, engage in the business of strip coal mining or engage in working or operating any strip coal mine or strip coal mining property in the state of Montana, from which coal of any kind is extracted or produced by means of strip mining must, immediately upon engaging in such

business, work or operations, file with the state board of equalization, a certificate and statement, on forms prescribed by such state board of equalization, which shall contain the name under which such person is engaging in and carrying on such business, work and operations, within this state, giving the place or places of business or location of the strip coal mine or strip coal mining property; the name and address of the managing agent in this state, if an association, joint-stock company, or corporation, or if a firm or partnership, the names and addresses of the persons composing the same; if an association or corporation, under the laws of what state organized, its principal place of business and the names and addresses of its principal officers; and such other information as the board may deem necessary.

History: En. Sec. 4, Ch. 155, L. 1921; re-en. Sec. 2319, R. C. M. 1921; amd. Sec. 2, Ch. 244, L. 1967.

Amendments

The 1967 amendment inserted "strip coal" before "mine" or "mining" in seven places; inserted "strip" before "coal" in two places; and substituted "extracted or produced by means of strip mining" for "mined" after "any kind is" in two places.

CHAPTER 15—LICENSE TAXES—CORPORATION LICENSE TAX

Section
84-1501. Corporation license tax—organizations exempt therefrom.
84-1501.4. State banks exempt until national banks taxable.
84-1505.1. Release of tax liens.
84-1515. Reviver of corporation after suspension or forfeiture.

84-1501. (2296) **Corporation license tax—organizations exempt therefrom.** The term corporation includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity whether created under and pursuant to state laws, agreements, declarations of trust. Every corporation, except as hereinafter provided and except as provided in section 40-2821 (5), R.C.M. 1947, organized and existing under the laws of the state of Montana and engaged in business therein, shall annually pay to the state treasurer, as a license fee for carrying on business in said state of Montana, such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth; and every corporation, except as hereinafter provided, organized and existing under the laws of any other state or country, or the United States, and engaged in business in the state of Montana, shall annually pay for the exclusive use and benefit of the state of Montana a license fee for carrying on its business in the state of Montana of such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth.

The percentage of net income to be paid under this section shall be five and one-half per centum (5½%) of all net income for the taxable period. The rate set forth in this act shall be effective for all taxable years ending on or after February 28, 1967. Every corporation subject to taxation under this act shall, in any event, pay a minimum tax of not less than ten dollars ($10).

There shall not be taxed under this title any income received by any—(a) to (k). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 79, L. 1917; Subd. 16 amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R. C. M. 1921; amd. Sec. 1, Ch. 166, L. 1933; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965; amd. Sec. 1, Ch. 4, Ex. L. 1967.

Amendments

The 1967 amendment, in the first paragraph, inserted "and except as provided in section 40-2821 (5), R. C. M. 1947" after "hereinafter provided" in the second sentence; and, in the second paragraph, increased the percentage of net income to be paid under this section from 5¼% to 5½%, and inserted the second sentence.

Effective Date

Section 2 of Ch. 318, Laws 1967 read: "The rate set forth in this act shall be effective as to all taxable years ending on or after February 28, 1967, whether on the calendar or fiscal year basis."

Section 3 of Ch. 318, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 20, 1967.

Sale of Assets in Liquidation

Directors and trustees in liquidation of a liquidated corporation were entitled to a refund of that portion of the corporate license tax paid upon the gain realized by the corporation in the sale of its assets in liquidation. Barth v. Montana State Board of Equalization, — M —, 419 P 2d 484, 485.

84-1501.1. Definitions.

References

Barth v. Montana State Board of Equalization, — M —, 419 P 2d 484, 485.

84-1501.2. Election by small business corporation.

References

Barth v. Montana State Board of Equalization, — M —, 419 P 2d 484, 485.

84-1501.3. Small business option unavailable on dissolution, etc.

Application

This section applies only to shifting of the tax burden under sections 84-1501.1 and 84-1501.2. Barth v. Montana State Board of Equalization, — M —, 419 P 2d 484, 485.

84-1501.4. State banks exempt until national banks taxable. State banks organized under the Montana Bank Act shall not be required to pay the Montana corporation license tax provided for under chapter 15 of Title 84 of the Revised Codes of Montana, 1947, until and unless the said tax is required to be paid by national banks organized under the laws of the United States.

History: En. Sec. 1, Ch. 316, L. 1967.

Compiler's Notes

The Montana Bank Act, referred to in this section, is codified as secs. 5-101 to 5-1311.

Title of Act

An act to provide that state banks shall not be required to pay Montana corporation license tax until and unless said tax is required to be paid by national banks.

Effective Date

Section 2 of Ch. 316, Laws 1967 read "This act shall be effective as to all taxable periods ending after June 30, 1967, whether on the calendar or fiscal year basis."

84-1504. (2299) Computation of license tax, etc.

Sale of Assets in Liquidation

Directors and trustees in liquidation of a liquidated corporation were entitled to a refund of that portion of the corporate licensed tax paid upon the gain realized by the corporation in the sale of its assets in liquidation. Barth v. Montana State Board of Equalization, — M —, 419 P 2d 484, 485.

84-1505.1. Release of tax liens. (1) The state board of equalization shall issue a certificate of release of any lien imposed with respect to any tax due under Title 84, chapter 15, R.C.M. 1947, when it finds that the liability for the amount of tax assessed, together with all penalties and interest in respect thereof has been fully satisfied. The state board of equalization may issue a certificate of release if it determines that the lien is unenforceable.

(2) The state board of equalization may issue a certificate of discharge of any part of the property subject to any lien imposed with respect to any tax due under Title 84, chapter 15, R.C.M. 1947, if:

(a) It finds that the fair market value of that part of the property remaining subject to the lien is at least double the value of the unsatisfied liability secured by such lien and the amount of all other liens upon the property which may have priority to such lien;

(b) There is paid to the state treasurer in part satisfaction of the liability secured by the lien, an amount which shall not be less than the value, as determined by the state board of equalization, of the interest of the state of Montana in the part to be discharged; or

(c) The state board of equalization determines at any time that the interest of the state of Montana in the part to be so discharged has no value.

History: En. Sec. 1, Ch. 53, L. 1967.

Title of Act

An act to permit release of lien and discharge of property from force of lien imposed with respect to corporation license tax liability.

84-1511. (2303.3) **Return and payment of tax by corporations, etc.**

Sale of Assets in Liquidation

Directors and trustees in liquidation of a liquidated corporation were entitled to a refund of that portion of the corporate license tax paid upon the gain realized by the corporation in the sale of its assets in liquidation. Barth v. Montana State Board of Equalization, — M —, 419 P 2d 484, 485.

84-1515. (2303.7) **Reviver of corporation after suspension or forfeiture.** Any corporation which has suffered the suspension or forfeiture referred to in the preceding section may be relieved therefrom upon making application therefor in writing supported by a certificate from the state board of equalization showing that the required return has been made and filed and/or that the tax and interest and penalties have been paid, for which the suspension or forfeiture occurred. Application for reviver may be made by any stockholder or creditor of the corporation or by a majority of the surviving trustees or directors, and the same shall be filed with the secretary of state, for which he shall receive a filing and recording fee of five dollars ($5). In case the application is made more than one (1) year from the date the suspension or forfeiture occurred the applicant shall pay twice the amount of the tax and penalties due the state for the taxable year with respect to which the suspension or forfeiture occurred, and upon such payment the secretary of state shall issue a certificate of reviver for which he shall collect a fee of five dollars ($5) and thereupon the applicant shall be revived. The reviver shall be without prejudice to any action,

defense or right which has accrued by reason of the original suspension or forfeiture. The certificate of reviver shall be prima facie evidence of the reviver. Any certificate of reviver provided for in this section may be recorded in the office of the county recorder in any county of this state.

History: En. Sec. 11, Ch. 166, L. 1933; amd. Sec. 1, Ch. 49, L. 1947; amd. Sec. 15, Ch. 117, L. 1961; amd. Sec. 1, Ch. 52, L. 1967.

Amendments

The 1967 amendment substituted "more than one (1) year from the date" for "in any taxable year other than the taxable year in which" after "application is made" and substituted "with respect to which" for "in which" after "for the taxable year," both in the third sentence.

Effective Date

Section 2 of Ch. 52, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 18, 1967.

CHAPTER 18—LICENSE TAXES—GASOLINE DEALERS AND DISTRIBUTORS—SPECIAL FUEL TAX

Section
84-1801.1. Gasoline license tax—amount—evaporation and other loss.
84-1818. Refund of gasoline license tax—procedure.
84-1836. Credits.
84-1837. Procedures for credits.
84-1838. Administration.
84-1840. Disposition of funds.
84-1842. Special fuel user's temporary trip permits—agents by whom issued.

84-1801.1. Gasoline license tax—amount—evaporation and other loss. Beginning July 1, 1967, every dealer (as defined in section 84-1801) shall, when engaged in the business of producing, refining, manufacturing or compounding gasoline for sale or use, or importing gasoline into the state of Montana or purchasing gasoline within the state of Montana for sale or use, pay to the state board of equalization a license tax for the privilege of engaging in and carrying on such business in this state, in an amount equal to six and one-half cents (6½¢) for each gallon of gasoline (as defined in section 84-1801, subsections 1 and 8) refined, manufactured, produced or impounded by such dealer, and distributed, used or sold by him in this state, or shipped, transported or imported by such dealer into and distributed, used or sold by him within this state, after it has arrived in and is brought to rest within this state, whether sold in the original packages or in broken packages; provided that all gasoline delivered by any dealer to any of his own service stations in this state shall be deemed to have been sold, and shall be treated and considered as sold, in computing such license tax, in the same manner as though the same had been sold to other persons. In making the computation of license tax due and in making payment thereof, two per cent (2%) of the first six cents (6¢) of such tax shall be deducted by the dealer as an allowance for evaporation and other loss of gasoline handled by such dealer. No gasoline used or sold by such dealer, which was purchased by him from a dealer who has paid the tax thereon, shall be included or considered in determining the amount of such license tax to be paid by such dealer, and no gasoline exported by such dealer out of the state of Montana shall be included in the computation of any dealer's license tax herein provided for.

History: En. Sec. 1, Ch. 230, L. 1957; amd. Sec. 1, Ch. 6, Ex. L. 1967.

Amendments

The 1967 amendment substituted "July 1, 1967" for "January 16, 1958" near the beginning of this section; increased the license tax fee rate from 6¢ to 6½¢ for each gallon of gasoline; and substituted "of the first six cents (6¢)" for "of the amount" after "two per cent (2%)" in the second sentence.

84-1818. (2396.4) **Refund of gasoline license tax—procedure.** (1) Any person who shall purchase and use any gasoline, with reference to which there has been paid into the treasury of the state of Montana, under the laws of this state licensing dealers in gasoline, a state gallonage tax, for the purpose of operating or propelling stationary gas engines, tractors used for purposes other than on the public highways or streets of this state, motorboats, aeroplanes or aircraft, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state, and who has paid said tax either directly to the state of Montana or indirectly as a part of the purchase price of said gasoline, shall be allowed and paid as a refund or drawback from the account credited with such tax an amount of money equal to the unit state gallonage tax, multiplied by the number of gallons of gasoline so purchased and used, provided that counties, incorporated cities, towns and school districts of this state shall be exempt from the payment of said tax by any such county, city, town or school district upon gasoline used by it in the performance of any of its governmental and proprietary functions, or either, imposed or authorized by law, including construction, maintenance and repair of all roads, highways and public places within the county limits and all streets, avenues, alleys and other public places within the corporate limits of such city or town and such exemption from payment of tax shall be allowed at the time of sale when purchaser furnishes to the seller a valid exemption certificate on a form approved by the state board of equalization; provided, that such refund or drawback shall in no instance exceed the total amount of the tax paid or to be paid, to the state of Montana, upon presenting to the board of equalization of the state of Montana, within the time allowed by law, a written statement, accompanied by the invoice or invoices issued to the claimant at the time of purchase and delivery of such gasoline showing such purchase and use, which statement shall set forth in words and figures, the total amount of the gasoline so purchased, and the purpose for which the same was actually used, the amount of the tax and such additional information as may be required by said board on forms to be furnished by them; each separate delivery shall constitute a purchase for the purpose hereof.

(2). * * * [Same as parent volume.]

(3) Should the board of equalization, after investigation, find that the statement so made by said consumer contains errors which, in the opinion of the board, were not inserted for the purpose of fraud, it may correct the statement and approve the same as corrected, whereupon warrant shall issue, or the board may, in its discretion, require the claimant to file an amended statement before action is taken thereon. If, upon investigation, it shall be determined by the state board of equalization that any claim has been fraudulently presented or is supported, as to any item therein

by invoice or invoices fraudulently made or altered in any manner, or that any statement in the claim contained or the affidavit thereto, is willfully false in any particular and so made for the purpose of misleading said board, the board may reject such claim in toto.

(4) to (8). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 17, L. 1927; amd. Sec. 1, Ch. 168, L. 1929; amd. Sec. 1, Ch. 175, L. 1931; amd. Sec. 1, Ch. 96, L. 1937; amd. Sec. 1, Ch. 67, L. 1939; amd. Sec. 1, Ch. 130, L. 1947; amd. Sec. 1, Ch. 168, L. 1949; amd. Sec. 1, Ch. 198, L. 1949; amd. Sec. 1, Ch. 221, L. 1953; amd. Sec. 3, Ch. 17, L. 1955; amd. Sec. 1, Ch. 212, L. 1955; amd. Sec. 1, Ch. 17, L. 1963; amd. Sec. 3, Ch. 64, L. 1963; amd. Sec. 6, Ch. 126, L. 1963; amd. Sec. 1, Ch. 224, L. 1963; amd. Sec. 2, Ch. 251, L. 1967.

Amendments

The 1967 amendment inserted "motorboats" before "aeroplanes" and inserted "from the account credited with such tax" after "drawback" in subsection (1); and made a minor change in punctuation in subsection (3).

84-1836. Credits. Any licensed special fuel user or licensed special fuel dealer who has paid a special fuel tax either directly or to the vendor from whom it was purchased, shall receive credit in the amount of any tax paid on special fuel exported for use outside of this state, or for any use off the public roads and highways of this state, or for any overpayment of special fuel taxes not due to the state. Special fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state.

Any licensed special fuel user who purchases a temporary special fuel permit, and thereafter applies for a special fuel vehicle permit for the same vehicle in less than eleven (11) days after the temporary permit is issued, shall receive credit in the amount of the temporary permit fee.

History: En. Sec. 7, Ch. 162, L. 1955; amd. Sec. 1, Ch. 104, L. 1967.

Amendments

The 1967 amendment substituted "licensed special fuel user or licensed special fuel dealer" for "person" near the beginning of the first paragraph; added "or for any use * * * to the state" at the end of the first sentence of the first paragraph; and added the second paragraph.

84-1837. Procedures for credits. Should a licensed special fuel user or licensed special fuel dealer desire to receive refund of special fuel taxes or of the temporary permit fee, the user or dealer shall make a signed and written request to the board requesting those amounts then due. Any amount determined to be creditable by the board under section 84-1836 shall first be credited on any amounts then due and payable from the special fuel dealer or special fuel user to whom the refund is due, and the board shall then certify the balance to the credit of the dealer or user, and a warrant shall be drawn upon the state treasurer for the amount of such claim and same shall be paid in the same manner as other claims against the state are paid.

Provided however, in case any special fuel user or special fuel dealer fails or neglects to file a request for refund of special fuel taxes within twelve (12) months from the date his special fuel license became canceled, the board shall be under no obligation to make a refund.

History: En. Sec. 8, Ch. 162, L. 1955; amd. Sec. 2, Ch. 104, L. 1967.

Amendments

The 1967 amendment inserted the first sentence of the first paragraph; added "and a warrant shall be * * * claims against the state are paid" at the end of the first paragraph; and added the second paragraph.

84-1838. Administration. (a). * * * [Same as parent volume.]

(b) Examination of records: The board or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any special fuel dealer or special fuel user or any person dealing in, transporting, or storing special fuel as defined in this act and to investigate the character of the disposition which any person makes of such special fuel in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If such books, papers, records and equipment are not maintained in this state at the time of demand, they shall be furnished to the board for review and shall be accompanied by the special fuel dealer or special fuel user or such dealer or user shall bear the reasonable cost of examination by an agent authorized or designated by the board at the place where such books or records are kept provided the taxpayer shall not be liable for such costs for a period exceeding one (1) week or for such longer period as he may consent to in writing, unless the result of said examination is the payment of a tax deficiency.

(c) and (d). * * * [Same as parent volume.]

History: En. Sec. 9, Ch. 162, L. 1955; amd. Sec. 1, Ch. 106, L. 1967.

Amendments

The 1967 amendment inserted "and shall be accompanied by the special fuel dealer or special fuel user" after "review" in the second sentence of subsection (b).

84-1840. Disposition of funds. All taxes, interest and penalties collected under this act shall be turned over promptly to the state treasurer and the state treasurer shall place the same in the earmarked revenue fund to the credit of the state highway department.

(1) One million five hundred thousand dollars ($1,500,000) of the funds collected under this act shall be allocated each fiscal year to the counties and incorporated cities and towns in Montana for construction, reconstruction and repair of rural roads, and city or town streets and alleys, as provided in subsections (a) and (b) hereof.

(a) Six hundred thousand dollars ($600,000) shall be divided among the various counties in the following manner:

(i) Forty per centum (40%) in the ratio that the rural road mileage in each county exclusive of the federal-aid interstate system and the federal-aid primary system bears to the total rural road mileage in the state exclusive of the federal-aid interstate system and the federal-aid primary system.

(ii) Forty per centum (40%) in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns.

(iii) Twenty per centum (20%) in the ratio that the land area of each county bears to the total land area of the state.

(b) Nine hundred thousand dollars ($900,000) shall be divided among the incorporated cities and towns in the following manner:

(i) Fifty per cent (50%) of the sum shall be divided in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana.

(ii) Fifty per cent (50%) shall be divided in the ratio that the city or town street and alley mileage within corporate limits bears to the total street and alley mileage within the corporate limits of all cities and towns in Montana.

(2) All funds hereby allocated to counties, cities and towns shall be used exclusively for the construction, reconstruction and repair of rural roads, city or town streets and alleys, or for the share which such city, town or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets which are part of the federal-aid primary or secondary highway system, or urban extensions thereto.

(3) Upon receipt of the allocation provided herein, the county commissioners, in the case of counties, or the governing body, in the case of incorporated cities or towns, shall propose the expenditure of said funds to the state highway commission. The commission may consult with the county commissioners or the governing body proposing expenditures before approving the same provided, however, that before any contract for the expenditure of funds provided herein shall be let, an agreement covering the same shall be executed by both the proposing body and the state highway commission.

(4) All construction, reconstruction and repair authorized herein shall be pursuant to the design and subject to the supervision of the state highway commission, and all funds hereby allocated to counties, cities and towns shall be disbursed by the state highway commission to the lowest responsible bidder according to the bidding procedures specified in chapter 41, Title 32 of this code.

(5) The state highway commission shall make and establish such rules and regulations as may be necessary to carry out the intent of this act and shall keep records of the funds allocated to each city or town, and the subsequent expenditure of said funds.

(6) For the purposes of this act where distribution of funds is made on a basis related to population, the population shall be determined by the last preceding official federal census.

(7) for the purposes of this act where determination of mileage is necessary for distribution of funds it shall be the responsibility of the cities, towns and counties to furnish to the state highway commission a yearly certified statement indicating the total mileage within their respective areas applicable to this act. All mileage submitted shall be subject to review and approval by the state highway commission.

History: En. Sec. 11, Ch. 162, L. 1955; amd. Sec. 213, Ch. 147, L. 1963; amd. Sec. 2, Ch. 6, Ex. L. 1967.

Amendments

The 1967 amendment added paragraphs (1) through (7).

Separability Clause

Section 4 of Ch. 6, Ex. Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void,

the remainder of this act shall continue in full force and effect."

Repealing Clause

Section 3 of Ch. 6, Ex. Laws 1967 repealed all acts and parts of acts in conflict therewith.

84-1842. Special fuel user's temporary trip permits—agents by whom issued. Any person operating a special fuel-powered vehicle upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by section 84-1833, shall be required to purchase a special fuel user's temporary trip permit. The permits will be issued by scale house personnel, gross vehicle weight (g.v.w.) patrol crews, Montana highway patrolmen, and such other enforcing agents as the board of equalization may prescribe by order, rule or regulation.

History: En. Sec. 1, Ch. 200, L. 1961; amd. Sec. 1, Ch. 105, L. 1967.

Amendments

The 1967 amendment substituted the present first sentence of the section for a former first sentence which read "A temporary permit shall be issued to all unlicensed users of all special fuel vehicles operating within the state of Montana."

CHAPTER 35—LICENSES—PUBLIC CONTRACTORS

Section
84-3501. Definitions.
84-3505. Classes of licenses—rights granted under licenses—fees.
84-3507. Bids to show bidder is licensed, is not presently working overtime on any incomplete contract, and class of bid.
84-3513. Retention of contract payments to pay assessments—transmittal to board of equalization—contractor to pay when funds not retained—refunds.
84-3514. Corporate license tax credit—additional license fees—treatment of personal property tax as credit.
84-3515. State board of equalization to establish rules and regulations.
84-3516. Failure to file contractor's license—penalty.

84-3501. (2433.1) **Definitions.** The following words, terms and phrases in this act are, for the purposes hereof, defined as follows:

(a). * * * [Same as parent volume.]

(b) A "public contractor" within the meaning of this act shall include any person who submits a proposal to or enters into a contract for performing all public construction work in the state, with the federal government, state of Montana, or with any board, commission or department thereof, or with any board of county commissioners, or with any city or town council, or with any agency of any thereof, or with any other public board, body, commission or agency, authorized to let or award contracts for any public work when the contract cost, value or price thereof exceeds the sum of one thousand dollars ($1,000).

(c). * * * [Same as parent volume.]

(d) "Gross receipts" means all receipts from sources within the state whether in the form of money, credits or other valuable consideration, received from, engaging in or conducting a business, without deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, taxes, losses or any other expense whatsoever. However, "gross receipts" shall not include cash discounts allowed

and taken on sales and sales refunds, either in cash or by credit, uncollectible accounts written off from time to time, and payments received in final liquidation of accounts included in the gross receipts of any previous return made by the person.

History: En. Sec. 1, Ch. 178, L. 1935; amd. Sec. 1, Ch. 195, L. 1967.

Amendments

The 1967 amendment in subsection (b) inserted "for performing all public construction work in the state" after "into a contract"; inserted "federal government" before "state of Montana"; deleted "the construction or reconstruction" after "award contracts for"; and added subsection (d).

84-3505. (2433.5) **Classes of licenses—rights granted under licenses—fees.** (1) There shall be three (3) classes of licenses issued under the provisions of this act; and such classes of licenses are hereby designated as Classes A, B, and C. Any applicant for a license under the provisions hereof, shall specify in his application the class of license applied for.

(2) The holder of a Class A license shall be entitled to engage in the public contracting business within the state of Montana without any limitation as to the value of a single public contract project, subject, however, to such prequalification requirements as may be imposed by the public body or bodies referred to in section 84-3501 (b) and at the time of making the application for such license the applicant shall pay to the registrar a fee in the sum of two hundred dollars ($200).

(3) The holder of a Class B license shall be entitled to engage in the public contracting business within the state of Montana, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of fifty thousand dollars ($50,000); and shall pay unto the registrar as a license fee the sum of one hundred dollars ($100) for such Class B license at the time of making application therefor.

(4) The holder of a Class C license shall be entitled to engage in the public contracting business within the state of Montana, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of twenty-five thousand dollars ($25,000); and shall pay unto the registar as a license fee the sum of ten dollars ($10) at the time of making application therefor.

(5) In addition to the fees enumerated above, each public contractor shall pay to the state an additional license fee in a sum equal to one per cent (1%) of the gross receipts from public contracts during the income year for which the license is issued; provided, however, that the additional license fee hereby imposed shall not be paid upon or collectible from the gross receipts from any public contract which has been let to bid, upon which bids have been awarded, or which has been executed by a public body and a public contractor on the effective date of this act.

(6) Nothing herein shall require any contractor to pay any license fee on any public contract project of a value less than one thousand dollars ($1,000), nor shall any contractor be required to have a license hereunder in order to submit a bid or proposal for contracts advertised to be let by the Montana highway commission where federal aid is obtained from the bureau of public roads or the department of agricul-

ture of the United States; neither shall a successful bidder be required to be licensed as provided herein before the awarding and execution of any contract to be let by the state highway commission where federal aid from the bureau of public roads or the department of agriculture of the United States is involved.

History: En. Sec. 5, Ch. 178, L. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967.

Amendments

The 1967 amendment numbered the paragraphs in the old section, and inserted the present subsection (5) before the last paragraph of the old section, which is now numbered subsection (6).

84-3507. (2433.7) **Bids to show bidder is licensed, is not presently working overtime on any incomplete contract, and class of bid.** All bids and proposals for the construction of any public contract project subject to the provisions of this act shall contain a statement showing that the bidder or contractor is duly and regularly licensed hereunder and is not presently working beyond the contract time, including authorized time extensions, on any previously awarded public contract project. The number and class of such license then held by such public contractor shall appear upon such bid or proposal, and no contract shall be awarded to any contractor unless he is the holder of a license in the class within which the value of the project shall fall as hereinbefore provided, and unless the public contractor has completely executed any previous contract upon which he has worked beyond contract time.

History: En. Sec. 7, Ch. 178, L. 1935; amd. Sec. 3, Ch. 141, L. 1967.

Amendments

The 1967 amendment added "and is not presently working * * * on any previously awarded public contract project" at the end of the first sentence and added "and unless * * * he has worked beyond contract time" at the end of the second sentence.

84-3513 Retention of contract payments to pay assessments—transmittal to board of equalization—contractor to pay when funds not retained—refunds. The state, county, city or any agency or department thereof, as described in section 84-3501 (b), for whom the contractor is performing public work, shall withhold, in addition to other amounts withheld as provided by law, one per cent (1%) of all payments due the contractor and shall transmit such moneys to the state board of equalization. In the event that the one per cent (1%) of gross receipts is not withheld as provided, the contractor shall make payment of these amounts to the state board of equalization within thirty (30) days after the date on which the contractor receives each increment of payment for work performed by the contractor. Any overpayment of the one per cent (1%) of gross receipts withheld, or paid by any contractor hereunder, shall be refunded by the state board of equalization at the end of the income year upon written application therefor.

History: En. Sec. 3, Ch. 195, L. 1967.

Title of Act

An act providing for additional public contractors' license fees for all public construction work in Montana, defining terms, prescribing method of collection and disposition of fees, allowing a credit on corporation or income tax and personal property taxes paid in Montana by licensees on personal property used in li-

censees' contracting business, providing a penalty and an effective date; amending sections 84-3501 and 84-3505, R. C. M. 1947.

84-3514. Corporate license tax credit—additional license fees—treatment of personal property tax as credit. The additional license fees withheld or otherwise paid as provided herein may be used as a credit on the contractor's corporation license tax provided for in Title 84, chapter 15, R.C.M. 1947, or on the contractor's income tax provided for in Title 84, chapter 49, R.C.M. 1947, depending upon the type of tax the contractor is required to pay under the laws of the state.

Personal property taxes paid in Montana on any personal property of the contractor which is used in the business of the contractor and is located within this state may be credited against the license fees required under this act. However, in computing the tax credit allowed by this act against the contractor's corporation license tax or income tax, the personal property tax credit against the licensee fees herein required shall not be considered as license fees paid for the purpose of such income tax or corporation license tax credit.

History: En. Sec. 4, Ch. 195, L. 1967.

84-3515. State board of equalization to establish rules and regulations. The state board of equalization shall establish rules and regulations necessary for the effective implementation of the provisions of this act, including, but not limited to, requiring public contractors to file a contractor's return showing public works contracts performed during a calendar year.

History: En. Sec. 5, Ch. 195, L. 1967.

84-3516. Failure to file contractor's license—penalty. A person failing to file a contractor's license return as provided and required by the state board of equalization, upon conviction, shall be fined not less than one thousand dollars ($1,000) or more than ten thousand dollars ($10,000).

History: En. Sec. 6, Ch. 195, L. 1967.

Effective Date

Section 7 of Ch. 195, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 28, 1967.

CHAPTER 39—UNIFORM FEDERAL TAX LIEN REGISTRATION ACT

(Repealed—Section 8, Chapter 228, Laws of 1967)

84-3901 to 84-3907. (2155.1 to 2155.7) **Repealed.**

Repeal

These sections (Secs. 1 to 7, Ch. 8, L. 1927), the Uniform Federal Tax Lien Registration Act, were repealed by Sec. 8, Ch. 228, Laws 1967. For present law see secs. 45-1501 to 45-1507.

CHAPTER 41—COLLECTION OF GENERAL PROPERTY TAXES—TAX SALES—REDEMPTION—TAX DEEDS—SALE OF TAX DEED LANDS

Section
84-4130. Lien of state when vests in purchaser—how alone divested.

84-4130. (2197) **Lien of state when vests in purchaser—how alone divested.** On filing the certificate with the county clerk, the lien of the

state vests in the purchaser, and is only divested by the payment to him or to the county treasurer for his use of the purchase money and two-thirds (2/3) of one per cent additional for each month that elapses from the date of the sale until redeemed.

History: En. Sec. 121, p. 112, L. 1891; re-en. Sec. 3888, Pol. C. 1895; re-en. Sec. 2644, Rev. C. 1907; re-en. Sec. 2197, R. C. M. 1921; amd. Sec. 1, Ch. 8, L. 1967.

Amendments

The 1967 amendment inserted "two-thirds (2/3) of" preceding "one per cent additional."

Extent of Lien

This section does not permit mortgagee who had previously purchased certificates of tax sale to retain a lien upon the real estate for the amount of certificates after sheriff's sale. Stallings v. Erwin, — M —, 419 P 2d 480, 483.

Where, subsequent to purchase of tax certificates, mortgagee foreclosed the mortgage, the foreclosure sale cut off any lien asserted by mortgagee for taxes paid although the mortgage permitted the mortgagee to pay taxes and collect the same upon foreclosure. Stallings v. Erwin, — M —, 419 P 2d 480, 483.

84-4132. (2201) Time for redemption.

References

United States v. Johnston, 247 F Supp 707.

84-4133. (2202) Redemption to be made in lawful money, etc.

Check as "Lawful Money"

Use of a check by the small business administration in the redemption of tax delinquent property by the United States constituted "lawful money" under this section and certificate of redemption issued to the government four days before defendant filed application for tax deed was valid. United States v. Johnston, 247 F Supp 707.

84-4154. (2210) Redemption from tax sales.

References

United States v. Johnston, 247 F Supp 707.

CHAPTER 44—SETTLEMENT WITH STATE AUDITOR AND TREASURER

84-4403 to 84-4405. (2265 to 2267) Repealed.

Repeal

These sections (Secs. 4000 to 4002, Pol. C. 1895), relating to examination of tax collectors' books, were repealed by Sec. 23, Ch. 249, Laws 1967.

CHAPTER 46—BANKS—TAXATION

Section
84-4606. Banks with offices in more than one county—assessment and apportionment of tax.

84-4606. Banks with offices in more than one county—assessment and apportionment of tax. Any state or national bank, banking corporation, or private bank, the stock, moneyed capital, or moneys and credits of which are subject to taxation under the provisions of chapter 3 and chapter 46, Title 84, Revised Codes of Montana, 1947, and which has banking offices in more than one (1) county, shall furnish to the assessor of each such county the information required of it by chapter 46, Title 84,

Revised Codes of Montana, 1947, together with a statement of the book value of real estate owned and located in the respective counties and a statement of the deposit liability shown by the books of account of said bank at each of its said banking offices at the close of business the day next preceding the first Monday in March; and the aggregate tax on the stock, moneyed capital, and moneys and credits of such bank computed as provided by law shall be assessed by and be paid to the respective counties in the proportion which the amount of the deposit liability shown on the books of the office or offices of such bank located in such counties, respectively, shall bear to the total deposit liability of such bank.

History: En. Sec. 1, Ch. 72, L. 1967.

Title of Act

An act relating to the assessment for the purpose of taxation of bank stock, moneyed capital, and moneys and credits, in each county wherein a bank office is located and the payment of taxes thereon; providing for the furnishing of certain information to the county assessor of each such county by the bank officials and repealing all acts and parts of acts in conflict herewith.

Repealing Clause

Section 2 of Ch. 72, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 72, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 20, 1967.

CHAPTER 47—CITIES AND TOWNS—TAXATION AND LICENSE

Section
84-4701.6. Extraordinary levies—additional to all-purpose levy.

84-4701.6. Extraordinary levies—additional to all-purpose levy. That otherwise authorized extraordinary levies to service and pay bonded indebtedness of municipalities and to pay judgments against them, may be made by such municipalities in addition to such all-purpose levy provided in sections 84-4701.1, 84-4701.2, 84-4701.3, 84-4701.4 and 84-4701.5 of the Revised Codes of Montana, 1947.

History: En. 84-4701.6 by Sec. 1, Ch. 145, L. 1967.

Title of Act

An act to provide for authorized extraordinary levies to service and pay bonded indebtedness of such municipalities and to pay judgments obtained against them, may be made by such municipalities in addition to such all-purpose levy; and repealing all acts and parts of acts in conflict herewith.

Repealing Clause

Section 2 of Ch. 145, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 49—INCOME TAX

Section
84-4901. Income tax—definitions.
84-4902. Rate of income tax.
84-4913. Information agents' duties.
84-4920.1. Suspension of running of statute of limitations—grounds.
84-4928.1. Jeopardy assessments.
84-4931. Divulging information unlawful—exceptions—penalty.
84-4938. Furnishing copy of federal return, copies of federal corrections, and filing amended return required.
84-4946. Quarterly payment by employer—exception.

84-4901. (2295.1) **Income tax—definitions.** For the purpose of this act unless otherwise required by the context:

(1) and (2). * * * [Same as parent volume.]

(3) The term "taxable year" means the taxpayer's taxable year for federal income tax purposes.

(4). * * * [Same as parent volume.]

(5) The word "paid" for the purposes of the deductions and credits under this act means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this act. The term "received" for the purpose of computation of taxable income under this act, means received or accrued and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this act.

(6) and (7). * * * [Same as parent volume.]

(8) The words "foreign country" or "foreign government" mean any jurisdiction other than the one embraced within the United States, its territories and possessions.

(9). * * * [Same as parent volume.]

(10) The term "net income" means the adjusted gross income of a taxpayer less the deductions allowed by this act.

(11) The term "taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this act.

History: En. Sec. 1, Ch. 181, L. 1933; amd. Sec. 1, Ch. 166, L. 1947; amd. Sec. 1, Ch. 253, L. 1959; amd. Sec. 1, Ch. 62, L. 1967.

Amendments

The 1967 amendment substituted present subsection (3) for "The words 'taxable year' mean the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this act, and include the period for which such return is made if made for a fractional part of such year under the provisions of this act or under regulations prescribed by the board. The words 'fiscal year' mean an accounting period of twelve (12) months, ending on the last day of any month other than December thirty-first"; substituted "taxable income" for "net income" wherever found in subsection (5); substituted "its territories and possessions" for "The words 'United States' include the states, the territory of Hawaii, and the District of Columbia" at the end of subsection (8); made minor style changes in subsection (8); and inserted "adjusted" before "gross" in subsections (10) and (11).

Effective Date

Section 2 of Ch. 62, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 20, 1967.

84-4902. (2295.2) **Rate of income tax.** There shall be levied, collected and paid for each taxable year, commencing on or after December 31, 1966, upon the taxable income of every taxpayer subject to this tax, after making allowance for exemptions and deductions, as hereinafter provided, a tax at the following rates, to wit:

(a) On the first one thousand dollars ($1,000) of taxable income, or any part thereof, at the rate of two per centum (2%);

(b) On the next one thousand dollars ($1,000) of taxable income, or any part thereof, at the rate of three per centum (3%);

(c) On the next two thousand dollars ($2,000) of taxable income, or any part thereof, at the rate of four per centum (4%);

(d) On the next two thousand dollars ($2,000) of taxable income, or any part thereof, at the rate of five per centum (5%);

(e) On the next two thousand dollars ($2,000) of taxable income, or any part thereof, at the rate of six per centum (6%);

(f) On the next two thousand dollars ($2,000) of taxable income, or any part thereof, at the rate of seven per centum (7%);

(g) On the next fifteen thousand dollars ($15,000) of taxable income, or any part thereof, at the rate of eight per centum (8%);

(h) On any taxable income in excess of twenty-five thousand dollars ($25,000) of taxable income, or any part thereof, at the rate of ten per centum (10%).

History: En. Sec. 2, Ch. 181, L. 1933; amd. Sec. 1, Ch. 40, Ex. L. 1933; amd. Sec. 1, Ch. 228, L. 1957; amd. Sec. 1, Ch. 265, L. 1959; amd. Sec. 1, Ch. 281, L. 1965; amd. Sec. 1, Ch. 5, Ex. L. 1967.

Amendments

The 1967 amendment substantially rewrote this section, increasing the tax. For previous text, see parent volume.

Tax Credit

Section 2 of Ch. 5, Ex. Laws 1967 read "After the amount of tax liability has been computed for the current taxable year, each person filing a Montana individual income tax return may subtract five per cent (5%) of the tax liability, and the amount remaining is the amount due the state of Montana."

Repealing Clause

Section 5 of Ch. 5, Ex. Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 5, Ex. Laws 1967 read "This act shall be effective as to all taxable years commencing on or after December 31, 1966, whether on a calendar or fiscal year basis."

Section 4 of Ch. 5, Ex. Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 20, 1967.

84-4913. (2295.13) **Information agents' duties.** Every information agent shall make return to the board of complete information concerning the following distributions made for any individual during the taxable year, upon which no withholding tax has been deducted:

(1) Sums in excess of ten dollars ($10) distributed as dividends, interest as defined in section 6049 of the Internal Revenue Code of 1965 or as that section may be amended, and payments made under a retirement plan covering an owner-employee as defined in section 401 (c) (3) of the Internal Revenue Code of 1965 or as that section may be amended;

(2) Interest, other than that specified in subsection (1) of this section, rents, royalties, salaries, wages, prizes, awards, annuities, pensions and other fixed or determinable gains, profits and income in excess of six hundred dollars ($600), except interest coupons payable to the bearer.

The return should be made under the regulations and in the form and manner prescribed by the board, provided, however, that for ease of reporting, the form shall be as nearly identical to the comparable federal form as possible.

History: En. Sec. 13, Ch. 181, L. 1933; amd. Sec. 7, Ch. 260, L. 1955; amd. Sec. 1, Ch. 205, L. 1967.

Compiler's Notes

The Internal Revenue Code, referred to in subsection (1), is codified as Tit. 26 of the United States Code.

Amendments

The 1967 amendment completely rewrote this section. For previous text, see parent volume.

84-4920.1. Suspension of running of statute of limitations—grounds. The running of the statute of limitations provided for under section 84-4920 shall be suspended during any period that the federal statute of limitations for collection of federal income tax has been suspended by (1) written agreement signed by the taxpayer or, (2) when the taxpayer has instituted an action which has the effect of suspending the running of the federal statute of limitations, and for one (1) additional year. If the taxpayer fails to file a record of changes in federal taxable income or an amended return as required by section 84-4938, the said statute of limitations shall not apply until five years from the date the federal changes become final or the amended federal return was filed. If the taxpayer omits from gross income an amount properly includable therein which is in excess of twenty-five per cent (25%) of the amount of adjusted gross income stated in the return the said statute of limitations shall not apply for two additional years from the time specified in section 84-4920.

History: En. Sec. 2, Ch. 103, L. 1955; amd. Sec. 1, Ch. 61, L. 1967.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

Effective Date

Section 3 of Ch. 61, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 20, 1967.

84-4928.1. Jeopardy assessments. If the state board of equalization finds that the assessment or collection of the tax or a deficiency for any taxable year will be jeopardized in whole or in part by delay, it may mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the case of a tax for a current period, the state board of equalization may declare the taxable period of the taxpayer immediately terminated and shall mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax based on the period declared terminated.

A jeopardy assessment is immediately due and payable and proceedings for collection may be commenced at once.

History: En. 84-4928.1 by Sec. 2, Ch. 212, L. 1967.

Title of Act

An act providing an accelerated tax collection in the event it appears that a delay will jeopardize the collection of tax due the state of Montana; amending section 84-4946, R. C. M. 1947.

Effective Date

Section 3 of Ch. 212, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 28, 1967.

84-4931. (2295.30) **Divulging information unlawful—exceptions—penalty.** (1) to (3). * * * [Same as parent volume.]

(4) Further, notwithstanding any of the provisions of this section, the board shall furnish to the Montana highway patrol board all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to section 84-4910 (d), for the purpose of enabling said highway patrol board to administer the provisions of section 31-127, R.C.M. 1947.

History: En. Sec. 30, Ch. 181, L. 1933; amd. Sec. 1, Ch. 110, L. 1951; amd. Sec. 1, Ch. 253, L. 1967.

Amendments

The 1967 amendment added subsection (4).

84-4938. Furnishing copy of federal return, copies of federal corrections, and filing amended return required. Every taxpayer shall upon request of the board, furnish a copy of the return for the corresponding year which he has filed or may file with the federal government showing his net income and how obtained and the several sources from which derived. If the amount of a taxpayer's taxable income is changed or corrected by the United States Internal Revenue Service or other competent authority, the taxpayer shall report such change or correction to the board within ninety days after receiving notice thereof. If a taxpayer files an amended federal income tax return changing or correcting his federal taxable income for any taxable year, he shall also file an amended return with the state board of equalization within ninety days thereafter. The board shall supply all necessary forms and shall return all such forms to the taxpayer after they have been examined by the board, upon the request of the taxpayer.

History: En. 84-4938 by Sec. 11, Ch. 260, L. 1955; amd. Sec. 2, Ch. 61, L. 1967.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

84-4946. Quarterly payment by employer—exception. On or before the last day of the months of April, July, October and January of each calendar year, beginning with the month of October, 1955, every employer subject to the provisions of sections 84-4943 and 84-4945 shall file a return in such form and containing such information as may be required by the board, and shall pay therewith the amount required by section 84-4943 to be deducted and withheld by said employer from wages paid during the preceding quarterly period of three (3) months, beginning with wages paid from and after July 1, 1955.

If the total amount of the tax withheld by an employer under the provisions of this act upon the wages of all employees of any employer is less than ten dollars ($10) in each quarterly period of any year, such employer shall not be required to file the quarterly returns or to make the quarterly payments as provided in the preceding paragraph, but in lieu thereof such employer shall, on or before February fifteenth of the year succeeding that in which such wages were paid, file an annual return in such form as may be required by the board, and shall pay therewith the amount required to be deducted and withheld by the said employer from all wages paid during the preceding calendar year.

Provided, however, that if the board has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under section 84-4928.1 with respect to jeopardy assessments of income tax.

History: En. Sec. 5, Ch. 246, L. 1955; amd. Sec. 1, Ch. 212, L. 1967.

Amendments

The 1967 amendment, in the first paragraph, substituted "sections 84-4943 and

84-4945" for "this act" after "provisions of"; substituted "as may be required by" for "as shall be determined by" after "such information"; and substituted "section 84-4943" for "this act" after "the amount required by"; and, in the second paragraph, substituted "If the" for "Provided, however, that when the aggregate" before "total amount of the tax"; inserted "by an employer" after "withheld"; substituted "as provided in the preceding paragraph" for "last hereinabove provided for" after "quarterly payments"; deleted "next" before "succeeding"; substituted "as may be required by" for "as shall be determined by" after "in such form"; deleted "by this act" after "the amount required"; added the last paragraph; and made minor changes in phraseology.

CHAPTER 56—CIGARETTE TAX—LICENSES—STAMPS

Section
84-5606. The tax.
84-5621. Clerical and field assistants.

84-5606. The tax. Subdivision — (1) and (2). * * * [Same as parent volume.]

Subdivision—(3) From and after the effective date of this amendatory law there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivision (2) of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to wit:

Two cents (2¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then two cents (2¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of all bonds of the state of Montana, and the payment of interest thereon, issued under the authority of said Initiative No. 54 as amended, for the purpose of paying an honorarium to the residents of Montana who were in military service in the military forces of the United States in World War II, the Korean War, or World War I, and until the payment and retirement of all long-range building program bonds issued under the provisions of title 79, chapter 22, of the Revised Codes of Montana, 1947.

Subdivision—(4) From and after the effective date of this amendatory act of the thirty-eight legislative assembly of the state of Montana, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivisions (2) and (3) of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to wit:

One cent (1¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then one cent (1¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of the additional bonds of the state of Montana authorized by amendatory acts of the thirty-fifth and

thirty-eighth legislative assemblies, and the payment of the interest thereon and until the payment and retirement of all long-range building program bonds issued under the provisions of Title 79, chapter 22, of the Revised Codes of Montana, 1947.

Within seventy-two (72) hours after receipt by the distributor or dealer of any such cigarettes, except as hereinafter provided, he shall cause to be securely affixed thereto, the required insignia denoting the tax thereon. Said insignia shall be properly canceled prior to sale or removal for consumption under such regulations as the board may prescribe. Each package shall have the required insignia to affix thereto in such a manner that the insignia will be destroyed when the package is opened. Every person who shall make, alter, forge or counterfeit any license stamp or insignia provided for in this law, or who shall assist or be concerned therein, or who shall have in his possession any altered, forged, counterfeit or spurious stamp, license or insignia, with intent to defraud the state, is guilty of forgery, and shall be punished by imprisonment in the state prison for not less than one (1) year or more than fourteen (14) years.

History: En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967.

Amendments

The 1967 amendment added "and until the payment * * * Revised Codes of Montana, 1947" at the end of the second paragraph of subdivision (3), and after "interest thereon" in the second paragraph of subdivision (4), substituted the same phrase for "and the payment of the expenses of administration of the amendatory act."

Referendum Result

Section 1 of Ch. 318, Laws 1967, read: "It is determined that the electors of the state at the general election held in November, 1966, approved the levy and collection of the three-cent (3¢) per package cigarette tax authorized by section 84-5606, subdivisions (3) and (4), R. C. M. 1947, for the purpose of financing the cost of constructing and remodeling state buildings; this referendum measure having been presented at said election in the manner directed by chapter 264 of the Session Laws of the thirty-ninth legislative assembly, and having been approved by a majority of the electors voting on the question; and that it is now necessary to establish the procedure by which said referendum may be made effective."

INITIATIVE MEASURE NO. 54 AMENDMENTS

Chapter 270 of the 1963 Session, which amended Initiative Measure No. 54 (Laws 1951, pps. 781 to 790) was amended by chapter 112 of the 1967 Session: Section 9 of the act now reads:

Chapter 270, Laws 1963; amd. Chapter 112, Laws 1967

Section 9. Claims for benefits under the provisions of subdivision (1) of section 2, and/or under section 3 of said Initiative No. 54, as by this amendatory act amended, may be filed at any time before the expiration of four (4) years from and after the January first next following the date of the passage and approval of this act, provided, however, that said period of four (4) years shall be extended for a period equal to the period, or the aggregate of the periods, of the time during which the administration of this act shall be suspended, by reason of litigation or from any other cause.

[The remainder of Ch. 112, Laws 1967 read as follows:

"Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

"Section 3. This act shall be in full force and effect upon its passage and approval." Approved February 21, 1967.]

84-5621. Clerical and field assistants. The board is hereby authorized to employ such clerical and field assistants as may be necessary to prop-

erly administer the provisions of this law. All moneys collected under the provisions of subdivision (1) of section 84-5606, less the expense of collecting all the taxes levied, imposed and assessed by said section 84-5606, shall be paid to the state treasurer and deposited in the general fund of the state. All taxes levied, imposed and assessed under the provisions of subdivision (2) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a subfund in the sinking fund and shall, while any of the bonds hereafter issued and sold for the purpose of paying an honorarium, or adjusted compensation, to the residents of Montana who were in military service in the military forces of the United States in World War I or World War II, or any of the interest thereon, remain unpaid, be available for the payment thereof.

All taxes levied, imposed and assessed under the provisions of subdivision (3) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a subfund in the sinking fund, which shall, while any of the bonds hereafter issued and sold, in addition to the bonds authorized by said Initiative Measure No. 54, as originally enacted, or any of the interest upon such additional bonds, remain unpaid, be used only for the payment thereof, and of the expenses of administration of this act.

The War Veterans' Compensation Fund established by Initiative No. 54, as amended by chapter 44, Laws of 1957 is abolished and all moneys in the fund are transferred to a subfund in the bond proceeds and insurance clearance fund. When all veterans' honoraria authorized by law have been paid, such moneys shall be transferred to the two accounts in the sinking fund established by this section.

After all of the outstanding War Veterans' Compensation Bonds and World War I Compensation Bonds have been paid or redeemed, or after the necessary funds have been set aside for their payment or redemption, the balance of the proceeds theretofore collected under the provisions of subdivisions (3) and (4) of said section 84-5606 shall be transferred to the sinking fund account provided for in section 79-2203, R.C.M. 1947.

History: En. Sec. 21, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 209, Ch. 147, L. 1963; amd. Sec. 7, Ch. 270, L. 1963; amd. Sec. 6, Ch. 318, L. 1967.

Amendments

The 1967 amendment added the last paragraph.

Effective Date

Section 7 of Ch. 318, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 3, 1967.

CHAPTER 60—MIGRATORY PERSONAL PROPERTY—TAXATION

Section
84-6008. Assessment of personal property brought into the state—exceptions.

84-6008. Assessment of personal property brought into the state—exceptions. Any personal property, including livestock, brought, driven or coming into this state at any time during the year which is used in the state for hire, compensation or profit; or if the owner and/or the user of the property is engaged in gainful occupation or business enterprise in the state; or the property otherwise comes to rest and becomes a part

of the general property of the state, shall be subject to taxation and shall be assessed for all taxes, levied or leviable for that year in the county in which the same shall thus be, in the same manner and to the same extent except as hereinafter otherwise provided, as though such property had been in the county on the regular assessment date; provided that such property has not been regularly assessed for the year in some other county of the state; provided further that nothing herein contained shall be construed into authority to assess or levy any tax against any merchant or dealer within this state on goods, wares or merchandise brought into the county to replenish the stock of such merchant or dealer, in addition to the tax levied against the inventory of said merchant or dealer on the regular assessment date; provided further, that this act shall not apply to motor vehicles brought, driven or coming into this state by any nonresident migratory bona fide agricultural workers temporarily employed in agricultural work in Montana where said motor vehicles are used exclusively for transportation of agricultural workers.

History: En. Sec. 1, Ch. 41, L. 1953; amd. Sec. 4, Ch. 290, L. 1967.

Amendments

The 1967 amendment substituted "which is used in * * * property of the state" for "and which shall remain in the state for a period not less than thirty (30) days" before "shall be subject"; deleted "and remain" after "thus be"; deleted "and" after "county of the state"; substituted "any" for "an additional" after "assess or levy"; and substituted "in addition to * * * assessment date" for "so long as such addition does not materially increase the inventory or stock which has been duly assessed to such merchant or dealer as of the regular assessment date" before the third proviso.

Purchase from Dealer

Where new truck was brought into the state subsequent to the first day of January as replacement to a dealer's stock and therefore exempt from taxation under this section, truck was not subject to personal property taxation to the purchaser of the vehicle at the time of purchase, since he was not the owner of the truck on the date fixed by law for the assessment of property. Swartz v. Berg, — M —, 411 P 2d 736.

84-6009. Repealed.

Repeal

This section (Sec. 2, Ch. 41, L. 1953), which dealt with tax laws in relation to listing of personal property, was repealed by Sec. 6, Ch. 290, Laws 1967.

CHAPTER 65—LICENSE TAXES—RACING ASSOCIATIONS

(Repealed—Section 15, Chapter 196, Laws of 1965; Section 6, Chapter 216, Laws of 1967)

84-6502 to 84-6504. Repealed.

Repeal

These sections (Secs. 2 to 4, Ch. 57, L. 1961), relating to the taxing of racing associations, were repealed by Sec. 6, Ch. 216, Laws 1967.

CHAPTER 66—PROPERTY TAX ON HOUSE TRAILERS

Section
84-6601. Definitions.
84-6604. Penalty for failure to display or produce declaration, sticker or receipt.
84-6605. Act restricted to trailers subject to taxation.
84-6606. Verified declaration of destination on out-of-state mobile homes—delivery and affixing to vehicle—obtaining tax receipt—exemptions.
84-6607. State board of equalization to make regulations.

84-6601. Definitions. As used in this act:

(1) "Mobile home" means forms of housing known as "trailers," "house trailers" or "trailer coaches" exceeding eight (8) feet in width or thirty-two (32) feet in length designed to be moved from one place to another by an independent power connected thereto.

(2) "House trailer" means; (a) A trailer or semitrailer other than a mobile home as defined in this section which is designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) whether mobile or stationary; or

(b) a trailer or semitrailer whose chassis and exterior shell is designed and constructed for use as a house trailer, whether mobile or stationary.

(c) "dealer" means a person engaged in the distribution or sale of mobile homes.

History: En. Sec. 1, Ch. 275, L. 1965; amd. Sec. 4, Ch. 296, L. 1967.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

84-6604. Penalty for failure to display or produce declaration, sticker or receipt. (1) Whoever makes a false or fraudulent declaration of destination, or, when required, fails to execute a declaration of destination or fails to produce a declaration of destination or tax paid receipt, if a tax paid receipt is required, is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail for not more than six (6) months, or by a fine of not more than five hundred dollars ($500), or both.

(2) Whoever fails to display a property tax paid sticker or to produce a property tax paid receipt from fifteen (15) days after the due date for personal property taxes of one (1) year to the due date for personal property taxes of the next year shall constitute a misdemeanor punishable by a fine of not less than ten dollars ($10) nor more than fifty dollars ($50) or confinement in the county jail for not more than thirty (30) days or both such fine and imprisonment.

History: En. Sec. 4, Ch. 275, L. 1965; amd. Sec. 7, Ch. 296, L. 1967.

Amendments

The 1967 amendment inserted subsection (1); designated the old section as new subsection (2); substituted "Whoever fails" for "The failure" before "to display"; and deleted "the failure" before "to produce."

84-6605. Act restricted to trailers subject to taxation. The provisions of this act shall apply only to those mobile homes and house trailers, as defined in this act, subject to assessment and taxation under section 84-406 and section 84-6008.

History: En. Sec. 5, Ch. 275, L. 1965; amd. Sec. 8, Ch. 296, L. 1967.

Amendments

The 1967 amendment inserted "mobile homes and" before "house trailers."

84-6606. Verified declaration of destination on out-of-state mobile homes—delivery and affixing to vehicle—obtaining tax receipt—exemptions. (1) whoever brings a mobile home into the state of Montana shall immediately upon arrival in the state execute a written declaration verified under

oath stating the destination of the mobile home and such other information as the state board of equalization shall require and shall deliver the original of the declaration to whoever is on duty at the nearest port of entry station, state vehicle weight station or such other places and persons as the state board of equalization may prescribe. He shall also immediately upon arrival in the state of Montana affix a copy of the declaration to the mobile home at a conspicuous place.

(2) Whoever moves a mobile home from a point within the state of Montana to another point within or without the state of Montana shall first:

(a) Execute the declaration provided for in subsection (1) of this section, deliver the original of it to the treasurer of the county in which the move originates or to such other person as the state board of equalization shall prescribe and affix a copy of it to the mobile home to be moved at a conspicuous place;

(b) Obtain from the county treasurer of the county in which the move originates a receipt showing payment in full of property taxes due with respect to that mobile home to the date it is moved.

(3) The provisions of subsection (2) (b) of this section shall not apply whenever a person moves a mobile home:

(a) From a point without to a point within the state of Montana.

(b) Between places of business of dealers within or without the state of Montana.

(c) From the place of business of a dealer to a point within or without the state of Montana.

History: En. Sec. 5, Ch. 296, L. 1967.

84-6607. State board of equalization to make regulations. The state board of equalization may make reasonable rules and regulations necessary for or as an aid to effectuation of the purposes of this act.

History: En. Sec. 6, Ch. 296, L. 1967.

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VOLUME 6
Part 1

1967 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 6 (PART 1) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 6 (PART 1) THROUGH VOLUME 420, PACIFIC REPORTER (2ND SERIES)

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NEW LAWS IN VOLUME 6 (Part 1)

For index see pocket supplement to Replacement Volume 9

ENACTED IN 1965

Fiduciary permitted to hold property received though not qualified, 86-327.

Flood control, county and municipal participation, 89-3301 to 89-3313.

Packaged commodities offered for sale, 90-601 to 90-621.

Public utility secured transactions and financing statements, 87A-9-302.1 to 87A-9-302.3.

Water conservation board,

Director of board, 89-103.1 to 89-103.3.

Transfer of records, etc., from Carey land act board and state engineer, 89-103.4 to 89-103.8.

ENACTED IN 1967

Flood control, county and municipal participation, 89-3309.1, 89-3314.

Imitation Indian articles, 85-301 to 85-304.

Water conservation board, additional powers, 89-132.1.

Water Resources Act, 89-101.1, 89-101.2.

Weather modification and control, 89-310 to 89-331.

AMENDMENTS IN VOLUME 6 (Part 1)

Appropriation and adjudication of water rights, 89-813, 89-847 to 89-849, 89-851.

Dam and dike construction, 89-702.

Financing statement, 87A-9-402 to 87A-9-406.

Flood control and water conservation, county and municipal participation, 89-3301 to 89-3304, 89-3306 to 89-3311.

Ground water appropriation, 89-2911, 89-2913.

Irrigation districts, 89-1201, 89-1208, 89-1708.

Public utility secured transactions and financing statements, 87A-9-302.1, 87A-9-302.2.

Sealer of weights and measures, 90-122.

Trusts and trustees, 86-511.

Unemployment compensation, 87-106, 87-148.

Water conservation board, 89-102, 89-103, 89-103.3, 89-113.

Water rights, 89-813.

Yellowstone River waters, 89-907 to 89-909, 89-912, 89-914.

MONTANA REVISED CODES

TITLE 85—TRADE-MARKS

Chapter 3. Sale of imitation Indian articles, 85-301 to 85-304.

CHAPTER 3—SALE OF IMITATION INDIAN ARTICLES

Section 85-301. Definitions.
85-302. Imitation Indian articles to be clearly designated.
85-303. Designation of authentic Indian articles.
85-304. Violation as misdemeanor.

85-301. Definitions. As used in this act:

(1) "Indian" means a person who is enrolled or who is a lineal descendant of one enrolled upon an enrollment listing of the bureau of Indian affairs, or upon the enrollment listing of a recognized Indian tribe, domiciled in the United States.

(2) "Imitation Indian arts or crafts articles" means those made by machine, or made wholly out of synthetic or artificial materials, or articles which are not made by Indian labor or workmanship.

History: En. Sec. 1, Ch. 42, L. 1967.

Title of Act

An act regulating the retail sale of imitation American Indian arts and crafts articles.

85-302. Imitation Indian articles to be clearly designated. No person shall distribute, sell, or offer for sale in this state any imitation American Indian arts or crafts articles unless the articles are at all times clearly and legibly designated as imitation.

History: En. Sec. 2, Ch. 42, L. 1967.

85-303. Designation of authentic Indian articles. Only those articles bearing a registered trade-mark or label of authentic Indian labor or workmanship may be deemed authentic Indian arts or crafts articles.

History: En. Sec. 3, Ch. 42, L. 1967.

85-304. Violation as misdemeanor. Any person who violates this act is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 42, L. 1967.

TITLE 86—TRUSTS AND USES

Chapter 3. Trustee's obligations—sale, mortgage or lease of trust property, 86-327.
5. Trusts for benefit of third persons—obligations, powers and rights of trustees, 86-511.

CHAPTER 2—TRUSTS IN GENERAL—NATURE AND CREATION

86-210. (7887) **Involuntary trust resulting from fraud, etc.**

Transfer in Contemplation of Death

Where deceased, engaged in cattle partnership with his sister and her husband, during his last illness transferred bank account and interest in cattle to his sister and her husband, obligating them to pay all bills and expenses surrounding his illness and transfer some money to deceased's son, the sister and her husband were involuntary trustees of the property transferred from which they had paid expenses of deceased's last illness. Marshall v. Minlschmidt, — M —, 419 P 2d 486, 488.

CHAPTER 3—TRUSTEE'S OBLIGATIONS—SALE, MORTGAGE OR LEASE OF TRUST PROPERTY

Section 86-327. Fiduciary permitted to hold property received though not qualified investment.

86-327. Fiduciary permitted to hold property received though not qualified investment. In the absence of express provisions to the contrary in the trust instrument, any fiduciary may hold during the life of the trust all securities or other property, real or personal, received into or acquired by the trust from any source, excepting such as are purchased by the fiduciary in administering the trust, even though such securities or other property are not qualified investments.

History: En. Sec. 1, Ch. 66, L. 1965.

Title of Act

An act relating to the retention by trustees of securities and other property received into the trust.

CHAPTER 5—TRUSTS FOR BENEFIT OF THIRD PERSONS—OBLIGATIONS, POWERS AND RIGHTS OF TRUSTEES

Section 86-511. Compensation of trustee.

86-511. (7918) **Compensation of trustee.** When a declaration of trust, created by will or otherwise, is silent upon the subject of or the rate or amount of compensation, the trustee is entitled to such compensation as may be reasonable under the circumstances.

History: En. Sec. 3031, Civ. C. 1895; re-en. Sec. 5403, Rev. C. 1907; amd. Sec. 7918, R. C. M. 1921; amd. Sec. 1, Ch. 65, L. 1965. Cal. Civ. C. Sec. 2274. Field Civ. C. Sec. 1206.

Amendment

The 1965 amendment inserted "created by will or otherwise"; inserted "or the rate or amount of" before "compensation"; substituted "such compensation as may be reasonable under the circumstances" for "the same compensation as an executor"; and deleted second and third sentences, for text of which see parent volume.

TITLE 87—UNEMPLOYMENT COMPENSATION

Chapter 1. The unemployment compensation law, 87-106, 87-148.

CHAPTER 1—THE UNEMPLOYMENT COMPENSATION LAW

Section 87-106. Disqualification for benefits.
87-148. Definitions.

87-105. Benefit eligibility conditions.

Burden of Proof

Unemployment compensation claimant has the burden of showing that he is not disqualified from the receipt of benefits. Ollila v. Reeder, — M —, 417 P 2d 473, 475.

Withdrawal from Labor Market

Claimant, who voluntarily withdrew himself from the active labor market, rendered himself ineligible to receive unemployment compensation benefits. Ollila v. Reeder, — M —, 417 P 2d 473, 475.

87-106. Disqualification for benefits. An individual shall be disqualified for benefits—

(a) to (d). * * * [Same as parent volume.]

(e) For any week with respect to which he is receiving or has received payment in the form of—

(1) and (2). * * * [Same as parent volume.]

(3) Benefits under the Railroad Unemployment Insurance Act or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual is receiving or has received benefits under an unemployment compensation law of another state or of the United States, if such benefits are paid pursuant to section 87-129.

Compensation as set forth in subsection (2) above, which is received as a lump-sum payment for a permanent disability shall not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving benefits under this act for any week except the one in which the lump-sum payment is made, providing recipient has earned sufficient new wage credits following settlement.

Receipt of any wages, compensation or benefits as set forth in subsection (1), (2), or (3) above, after payment of unemployment benefits, and with respect to the same week for which unemployment benefits were received, will thereupon require such individual to repay such unemployment benefits and the commission may collect such unemployment benefits in the same manner as provided for collection of benefits under section 87-145 (d).

(f) and (g). * * * [Same as parent volume.]

(h) Where retired and entitled to receive retirement compensation in excess of one hundred dollars ($100.00) per calendar month paid in whole or in part from funds furnished by an employing unit, such disqualification to be applied as follows: All wages earned by such individual

in the employment from which he has been retired shall not be considered or included in determining his wage credits or weekly benefit amount under section 87-103 or 87-105. No benefit payments or amounts paid any retired individual shall ever be charged under section 87-109 against any employing unit from whose employment the individual is retired and entitled to receive retirement compensation, on account of that particular employment, unless and until the commission shall determine (upon hearing, if requested by employer, and after at least ten (10) days' written notice of such hearing to said employer) that the individual was not retired by the employer acting in good faith. This disqualification does not extend to the receipt of benefits under the Federal Social Security Act, as amended.

(i) and (j). * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967.

Amendments

The 1965 amendment inserted "in excess of one hundred dollars ($100.00) per calendar month" in the first sentence of subd. (h); substituted "retired individual" for "individual after such retirement" near the beginning of the present third sentence of subd. (h); inserted "and entitled to receive retirement compensation," following "individual is retired" in the present third sentence of subd. (h); and made a minor change in punctuation.

The 1967 amendment added the second paragraph in subd. (e) (3).

87-108. Procedure and appeals.

Findings of Commission

Finding of unemployment compensation commission that claimant was not available for and seeking work as required by section 87-105 was proper where the evidence showed that claimant quit his job to protect his social security retirement benefits; he knew that his employer would not rehire him if he failed to report off from work; he went to Minnesota to take a rest; and he failed to seek full-time employment. Ollila v. Reeder, — M —, 417 P 2d 473, 475.

87-142. Limitation of fees.

Attorney's Fees

Attorney who failed to notify unemployment compensation commission that he represented three clients on a contingent fee basis, which the court determined could be considered a debt for "necessaries" under section 87-143, and not having requested notification from the commission so that he could collect his fee from the three men, was unable to proceed against either the commission or the state. McAlear v. Unemployment Compensation Commission, 145 M 458, 405 P 2d 219.

87-143. No assignment of benefits—exemptions.

Attorney's Fees

Where services rendered by attorney restored three men to the rolls of the unemployment compensation commission, set aside a one-year purge of their names from those rolls, and cleared their names of fraud, court concluded that under such facts attorney's fees should be considered a debt incurred for "necessaries." Mc Alear v. Unemployment Compensation Commission, 145 M 458, 405 P 2d 219.

87-148. Definitions. As used in this act, unless the context clearly requires otherwise:

(a) to (i). * * * [Same as parent volume.]

(j) (1) to (5). * * * [Same as parent volume.]

(6) The term "employment" shall not include:

(A) to (I). * * * [Same as parent volume.]

(J) Services performed by real estate, securities and insurance salesmen paid solely by commissions and without guarantee of minimum earnings.

(k) to (m). * * * [Same as parent volume.]

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965.

Amendment

The 1965 amendment inserted "securities" in subd. (j) (6) (J).

Effective Date

Section 3 of Ch. 84, Laws 1965 read "This act shall be in full force and effect from and after April 1, 1965."

TITLE 87A—UNIFORM COMMERCIAL CODE

Chapter 9. Secured transactions—sales of accounts, contract rights and chattel paper, 87A-9-302.1 to 87A-9-302.3, 87A-9-402 to 87A-9-406.

CHAPTER 1—GENERAL PROVISIONS

Part 1—Short Title, Construction, Application and Subject Matter of the Act

87A-1-101. Short title.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Commercial Code: Alabama, Colorado, Delaware, Florida, Hawaii, Iowa, Kansas, Minnesota, Nevada, North Carolina, North Dakota, South Carolina, South Dakota, Texas, Utah, Vermont, Washington, and also Virgin Islands.

CHAPTER 3—COMMERCIAL PAPER

Part 1—Short Title, Form and Interpretation

87A-3-112. Terms and omissions not affecting negotiability.

Cross-Reference

Waiver of statutory exemptions in unsecured note unenforceable, sec. 93-5813.1.

Part 4—Liability of Parties

87A-3-407. Alteration.

DECISIONS UNDER FORMER LAW

Material Alteration

In conviction of grand larceny, in which defendant had stolen and subsequently cashed check, the tearing of the check and its repair did not constitute spoilation under former section 55-907, so as to make the check a nonnegotiable instrument. State v. Romero, 146 M 77, 404 P 2d 500.

CHAPTER 9—SECURED TRANSACTIONS—SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

Part 3. Rights of Third Parties—Perfected and Unperfected Security Interests—Rules of Priority

Section 87A-9-302.1. Financing statements of transmitting utilities—definitions.
87A-9-302.2. Place of filing of utility financing statement—contents—perfection of security interest.
87A-9-302.3. Continued effectiveness of certain laws.

Part 4. Filing

Section 87A-9-402. Formal requisites of financing statement—amendments.
87A-9-403. What constitutes filing—duration of filing—effect of lapsed filing—duties of filing officer.
87A-9-404. Termination statement.
87A-9-405. Assignment of security interest—duties of filing officer—fees.
87A-9-406. Release of collateral—duties of filing officer—fees.

Part 3—Rights of Third Parties—Perfected and Unperfected Security Interests—Rules of Priority

87A-9-302.1. Financing statements of transmitting utilities—definitions. As used in this act,

(a) "Transmitting utility" means: (1) Any corporation or other business entity primarily engaged, pursuant to rights or franchises issued by and subject to the jurisdiction of a state or federal regulatory body, in the railroad or street railway business, the telephone or telegraph business, the transmission of oil, gas or petroleum products by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, and (2) any other corporation primarily engaged in the production, transmission or distribution of electricity, or the furnishing of telephone service, whether or not such corporation is subject to the jurisdiction of a state or federal regulatory body.

(b) "Uniform Commercial Code" means Chapters 1 through 10 of Title 87A of the Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 76, L. 1965; amd. Sec. 1, Ch. 279, L. 1967.

Compiler's Note

Although the title of Ch. 76, Laws 1965, referred to codification of this act at 87A-9-408, the act itself contained no directions as to compilation.

Title of Act

An act relating to the Uniform Commercial Code of Montana by adding a new section to be known and codified as section 87A-9-408, relating to the filing by certain public utilities of certain instruments required to be filed under the provisions of the Uniform Commercial Code; providing for a repealing clause; providing for a severability clause; and providing for an effective date.

Amendments

The 1967 amendment subdivided subsection (a), designating the first sentence as subsection (a)(1) and adding subsection (a)(2), and made minor changes in punctuation.

87A-9-302.2. Place of filing of utility financing statement—contents—perfection of security interest. Financing statements of a transmitting utility, notwithstanding sections 87A-9-302(3), 87A-9-302(4), 87A-9-401(1), 87A-9-402, 87A-9-403, 87A-9-404, 87A-9-405 and 87A-9-406 of the Uniform Commercial Code.

(a) If filing is required under the Uniform Commercial Code, the proper place to file in order to perfect a security interest in personal property or fixtures of a transmitting utility or other corporation covered hereby is in the office of the secretary of state;

(b) When the financing statement covers goods of a transmitting utility which are or are to become fixtures, no description of the real estate concerned is required;

(c) A security interest in rolling stock of a transmitting utility may be perfected either as provided in section 20 (c) of the Interstate Commerce Act or by filing a financing statement pursuant to the Uniform Commercial Code as provided in subsection (a).

History: En. Sec. 2, Ch. 76, L. 1965; amd. Sec. 2, Ch. 279, L. 1967.

Compiler's Note

Filing provisions of Interstate Commerce Act, see 49 U. S. C., sec. 20c.

Amendments

The 1967 amendment, in the first paragraph, inserted "87A-9-403, 87A-9-404, 87A-9-405 and 87A-9-406" after "87A-9-402"; in subdivision (a), inserted "or other corporation covered hereby" after "transmitting utility."

Repealing Clause

Section 3 of Ch. 279, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 279, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

87A-9-302.3. Continued effectiveness of certain laws. Unless displaced by the specific provisions of this act, the Uniform Commercial Code and other applicable laws remain in full force and effect and supplement the provisions of this act.

History: En. Sec. 3, Ch. 76, L. 1965.

Repealing Clause

Section 4 of Ch. 76, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 5 of Ch. 76, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 6 of Ch. 76, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

Part 4—Filing

87A-9-402. Formal requisites of financing statement—amendments. (1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. Except for financing statements filed pursuant to section 87A-9-302.2, R.C.M. 1947 when the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned and the name of the record owner or record lessee thereof. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

(2). * * * [Same as parent volume.]

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) _____

Address _____

Name of secured party (or assignee) _____

Address _____

Name of record owner or record lessee _____

Address _____

1. to 4. * * * [Same as parent volume.]

(4) and (5). * * * [Same as parent volume.]

History: En. Sec. 9-402, Ch. 264, L. 1963; amd. Sec. 1, Ch. 272, L. 1967.

Amendments

The 1967 amendment, in subsection (1), inserted "Except for financing statements filed pursuant to section 87A-9-302.2, R. C. M. 1947" at the beginning of the third sentence and added "and the name of the record owner or record lessee thereof" after "real estate concerned"; and, in subsection (3), inserted after the name and address of the secured party "Name of record owner or record lessee" and "Address."

87A-9-403. What constitutes filing—duration of filing—effect of lapsed filing—duties of filing officer. (1) to (4). * * * [Same as parent volume.]

(5) Except financing statements filed pursuant to section 87A-9-302.2, R.C.M., 1947, if the instrument covers crops growing or to be grown or goods which are, or are to become fixtures, or timber, said instrument shall be indexed in accordance with the requirements applicable to the recording of mortgages of real estate under the laws of this state. For the purpose of such indexing, each of the debtor (or assignor) and the record owner or record lessee of any real estate described in the financing statement shall be considered a mortgagor with respect to the financing statement and the secured party (or assignee) shall be considered a mortgagee with respect to the financing statement.

(6) If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing, and furnishing filing data for an original or a continuation statement shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing, indexing and furnishing filing data for an original or a continuation statement shall be one dollar ($1.00), except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such original or continuation statement.

History: En. Sec. 9-403, Ch. 264, L. 1963; amd. Sec. 2, Ch. 272, L. 1967.

Amendments

The 1967 amendment added a new subsection (5); redesignated old subsection (5) as new subsection (6); and substituted "data" for "date" after "furnishing filing" in the second sentence.

87A-9-404. Termination statement. (1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number, and by document number, as the case may be. A termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement thereof shall be one dollar ($1.00), except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such assignment or statement. If the affected secured party fails to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor

for one hundred dollars, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. The filing officer shall remove from the files, mark "terminated" and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the termination statement must be indexed in accordance with the requirements applicable to releases of real estate mortgages.

(3). * * * [Same as parent volume.]

History: En. Sec. 9-404, Ch. 264, L. 1963; amd. Sec. 3, Ch. 272, L. 1967.

Amendments

The 1967 amendment, added "and by document number, as the case may be" after "by file number" in the first sentence of subsection (1); and, inserted the third sentence in subsection (2).

87A-9-405. Assignment of security interest—duties of filing officer—fees. (1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in section 87A-9-403 (4). If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be one dollar ($1.00), except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such statement.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the statement of assignment must contain a reference to the document number of such original or continuation statement and must be indexed in accordance with the requirements applicable to assignments of mortgages. If the collateral is equipment or

rolling stock, of railroads or street railways, the fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be one dollar ($1.00), except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such statement.

(3). * * * [Same as parent volume.]

History: En. Sec. 9-405, Ch. 264, L. 1963; amd. Sec. 4, Ch. 272, L. 1967.

Amendments

The 1967 amendment substituted "data" for "date" in the fifth sentence of subsection (1); and inserted the fifth sentence in subsection (2).

87A-9-406. Release of collateral—duties of filing officer—fees. A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the statement of release must contain a reference to the document number of such original or continuation statement, and must be indexed in accordance with the requirements applicable to release of mortgages. If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing and noting such a statement of release shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing and noting such a statement of release shall be one dollar ($1.00), except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such statement.

History: En. Sec. 9-406, Ch. 264, L. 1963; amd. Sec. 5, Ch. 272, L. 1967.

Amendments

The 1967 amendment inserted the fourth sentence.

Repealing Clause

Section 6 of Ch. 272, Laws 1967 repealed all acts and parts of acts in conflict therewith.

TITLE 89—WATERS AND IRRIGATION

Chapter 1. Montana Water Resources Act of 1967, 89-101.1, 89-101.2 to 89-103.8, 89-118, 89-132.1.
3. Weather modification activities, 89-310 to 89-331.
7. Dams and reservoirs—construction and examination of, 89-702.
8. Water rights—appropriation and adjudication, 89-813, 89-847 to 89-849, 89-851.
9. Yellowstone River Compact—ratification of, 89-907 to 89-909, 89-912, 89-914.
12. Irrigation districts—organization, 89-1201, 89-1208.
17. Irrigation districts—bonds, 89-1708.
29. Appropriation and regulation of ground water, 89-2911, 89-2913.
33. County and municipal participation in flood control and water conservation, 89-3301 to 89-3309, 89-3309.1, 89-3310 to 89-3314.

CHAPTER 1—MONTANA WATER RESOURCES ACT OF 1967

Section 89-101.1. Short title.
89-101.2. State necessity and policy.
89-102. Definitions.
89-103. Montana water resources board—officers—meetings—quorum—employees—counsel—compensation.
89-103.1. Director of Montana water resources board—appointment—qualifications.
89-103.2. Powers and duties of director.
89-103.3. Salaries of director and employees of board.
89-103.4. Powers of Carey Land Act board and state engineer transferred to Montana water resources board.
89-103.5. Records and property transferred to Montana water resources board.
89-103.6. Funds and appropriations transferred to Montana water resources board.
89-103.7. Yellowstone compact obligations unimpaired.
89-103.8. State obligations unimpaired.
89-118. Powers and duties of board—actions at law.
89-132.1. Additional powers and duties of the board.

89-101. (349.1) Repealed.

Repeal

This section (Sec. 1, Ch. 35, Ex. L. 1933), relating to the state purpose of water conservation, was repealed by Sec. 7, Ch. 158, Laws 1967.

89-101.1. Short title. This act shall be known and may be cited as the "Montana Water Resources Act of 1967."

History: En. Sec. 1, Ch. 158, L. 1967.

Title of Act

An act providing for the Montana Water Resources Act of 1967; providing an expanded statement of state necessity and policy relating to water resources; amending section 89-103, R. C. M. 1947, providing that name of the state water conservation board shall be changed to Montana water resources board; providing additional powers for the Montana water resources board; providing for a comprehensive inventory of water resources; providing for a state water plan; amending section 89-102, R. C. M. 1947, providing additional definitions; amending section 89-813, R. C. M. 1947, providing that county clerks and recorders shall furnish the Montana water resources board with copies of water appropriations and transfers of water appropriations; and repealing section 89-101, R. C. M. 1947.

89-101.2. State necessity and policy. It is hereby declared that:

(1) The general welfare of the people of Montana, in view of the state's population growth and expanding economy, requires that water resources of the state be put to optimum beneficial use and not wasted.

(2) The public policy of the state is to promote the conservation, development and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens.

(3) The state, in the exercise of its sovereign power, acting through the water resources board, hereinafter created, shall co-ordinate development and use of the water resources of the state so as to effect full utilization, conservation and protection of its water resources.

(4) The development and utilization of water resources, and the efficient, economic distribution thereof, are vital to the people in order to protect existing uses and to assure adequate future supplies for domestic, industrial, agricultural and other beneficial uses.

(5) The water resources of the state must be protected and conserved to assure adequate supplies for public recreational purposes and for the conservation of wildlife and aquatic life.

(6) The public interest requires the construction, operation and maintenance of a system of works for the conservation, development, storage, distribution and utilization of water, which said construction, operation and maintenance is a single object and is in all respects for the welfare and benefit of the people of the state.

(7) It is necessary to co-ordinate local, state and federal water resource development and utilization plans and projects through a single agency of state government, hereinafter created and to be known as the "Montana water resources board."

(8) The greatest economic benefit to the people of Montana can be secured only by the sound co-ordination of development and utilization of water resources with the development and utilization of all other resources of the state.

(9) To achieve these objectives, and to protect the waters of Montana from diversion to other areas of the nation, it is essential that a comprehensive, co-ordinated multiple-use water resource plan be progressively formulated, to be known as the "state water plan."

History: En. Sec. 2, Ch. 158, L. 1967.

89-102. (349.2) **Definitions.** As used in this act, the following words and terms shall have the following meanings:

(a) the word "board" shall mean the Montana water resources board hereinafter created.

(b) The word "works" shall be deemed to include all property, rights, easements and franchises relating thereto and deemed necessary or convenient for their operation, and all water rights acquired or exercised by the board in connection with such works, and shall embrace all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals,

distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines and waterworks systems and shall include all such works for the conservation, development, storage, distribution and utilization of water including, without limiting the generality of the foregoing, works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, supplying of water for public, domestic, industrial or other uses and for fire protection.

(c) The term "cost of works" shall embrace the cost of construction, the cost of all lands, property, rights, easements and franchises acquired, which are deemed necessary for such construction, the cost of all water rights acquired or exercised by the board in connection with such works, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding three (3) years after the completion of construction, cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project, administrative expense and such other expenses as may be necessary or incident to the financing herein authorized and the construction of the works and the placing of the same in operation; provided, however, the board in determining the cost of works may make nonreimbursable allowances for costs of public benefits, including but not limited to, irrigation, recreation, flood prevention, fish and wildlife, and stream stabilization.

(d) The word "owner" shall include all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies or associations having any title or interest in any properties, rights, easements or franchises to be acquired.

(e) and (f). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 35, Ex. L. 1933; amd. Sec. 1, Ch. 95, L. 1935; amd. Sec. 1, Ch. 163, L. 1965; amd. Sec. 3, Ch. 158, L. 1967.

Amendments

The 1965 amendment inserted "waste canals, drainage canals, dikes" in paragraph (b); inserted "flood prevention, drainage, fish and wildlife, recreation" near the end of paragraph (b); substituted "industrial or other uses and for fire protection" at the end of paragraph (b) for "industrial and other uses for fire protection"; added the proviso at the end of paragraph (c); and inserted "drainage districts, flood control districts" in paragraph (d).

The 1967 amendment, in subdivision (a), substituted "Montana water resources" for "state water conservation."

89-103. (349.3) Montana water resources board—officers—meetings—quorum—employees—counsel—compensation. (1) There is hereby created a board to be known as the "Montana water resources board," and by that name the board may sue and be sued, plead and be impleaded, and contract and be contracted with. Wherever in this code the words, "state water conservation board" shall be used they shall mean the "Montana water resources board." The board shall consist of seven (7) members, including the governor and director who shall be members ex officio. The five (5) remaining members shall be qualified electors of the state and shall be appointed by the governor with the consent of the senate, and

shall serve for a term of six (6) years, except that immediately after the effective date of this act the governor shall appoint two (2) members of the board whose term of office shall expire on the second Monday in January, 1967, another two (2) members of the board whose term of office shall expire on the second Monday in January, 1969, and one (1) member of the board whose term of office shall expire on the second Monday in January, 1971, and their successors shall be appointed for a term of six (6) years, except that any person appointed to fill a vacancy shall be eligible for reappointment. Any of the appointed members of the board may be removed by the governor at any time, and any vacancy caused by the death, removal, or resignation or disqualification of any appointed member shall be filled by appointment as hereinabove provided. Succeeding appointments, except when made to fill a vacancy, shall be made on or before the second (2) Monday in January during the biennial session of the legislative assembly preceding the commencement of the term for which the appointment is made. Before entering upon the discharge of his duties, each appointed member shall take, subscribe and file with the secretary of state the oath prescribed by the constitution.

(2) The governor shall be the chairman of the board and the vice-chairman shall be the secretary and treasurer of the board. The board shall maintain its principal office in the city of Helena and may maintain such branch offices as it may determine. It shall elect a vice-chairman at its first meeting who shall preside at all meetings of the board when the chairman thereof is absent. It may provide for the holding of regular meetings and may hold a special meeting for the transaction of any business which may properly come before the board at any time and at any place in the state upon the call of the chairman or the vice-chairman or any two (2) members, notice of which may be given by telegram or by depositing in the mails at least forty-eight (48) hours before the meeting; but no notice shall be necessary if at least four (4) members of the board shall be present. A majority in number of the members shall constitute a quorum and the affirmative or negative vote of four (4) members shall be necessary to bind the board.

(3) The board shall have and adopt a seal bearing its name, which seal shall be affixed to such records and other instruments as it may direct, and all courts shall take judicial notice of said seal. It is authorized to adopt from time to time, as necessary or expedient, suitable rules and regulations for the administration of this act. The attorney general shall act as legal adviser for the board and shall perform such legal services as the board may request; he shall receive his actual and necessary expenses when engaged in travel in the performance of such services. With his consent the board may employ additional legal counsel, and the board may also appoint such technical and other assistants and employees as may be necessary to enable it to perform its duties and carry out the purposes of this act, and may fix their compensation.

(4) Each appointed member of the board shall receive, as compensation for his services, the sum of twenty dollars ($20) per day for each day actually engaged in the performance of the duties of his office, in-

cluding time of travel between his home and the place at which he performs such duties, together with actual traveling and maintenance expenses while away from his home in the performance of the duties of his office. All such compensation and expenses shall be paid solely from the funds provided under the authority of this act.

History: En. Sec. 3, Ch. 35, Ex. L. 1933; amd. Sec. 50, Ch. 177, L. 1965; amd. Sec. 1, Ch. 278, L. 1965; amd. Sec. 4, Ch. 158, L. 1967.

Compiler's Note

This section was amended twice in 1965, once by Ch. 177 and once by Ch. 278. Neither amendment mentioned or incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating the changes made by both amendatory acts.

Amendments

Chapter 177, Laws 1965, deleted "and secure such fidelity bonds as it may deem advisable" from the end of subsection (3).

Chapter 278, Laws 1965, increased the size of the board from five to seven and the number of appointive members from three to five; substituted the director for the state engineer as an ex officio member in the former second sentence of subsection (1); inserted "with the consent of the senate" after "appointed by the governor" in the former third sentence of subsection (1); substituted the portion of the former third sentence of subsection (1) relating to appointment and terms of the first appointive members for provisions relating to appointive members whose terms expired in 1935, 1937, and 1939; changed the number of votes required to bind the board, as specified in the final sentence of subsection (2) from three to four; increased the per diem rate of appointive members, as specified near the beginning of subsection (4), from $10 to $25; deleted from the end of subsection (4) a sentence reading, "The state engineer shall exercise such powers and perform such duties, in addition to his regular duties as state engineer and as the board shall prescribe, and may receive and be paid such additional salary for such additional duties as may be fixed by the board"; and made minor changes in phraseology and punctuation.

The 1967 amendment, in the first sentence of subsection (1), substituted "Montana water resources board" for "state water conservation board"; inserted the present second sentence in subsection (1); and, in subsection (4), decreased per diem of board members from $25 to $20.

Repealing Clause

Section 51 of Ch. 177, Laws 1965 read "Sections 3-407, 6-101, 6-102, 6-103, 6-104, 46-702, 66-810, 77-1004, 79-809, 82-404, 82-507, 82-1013, 82-1907, 82-2213, 92-106 and 92-107, R. C. M. 1947, are repealed."

89-103.1. Director of Montana water resources board—appointment—qualifications. There is hereby created the office of director of the state water conservation board who shall hereinafter be referred to as the "director." The director shall be appointed by the governor and shall serve at the pleasure of the governor, or until his successor shall be appointed and shall have qualified. No person shall be appointed director who has not such theoretical and such practical experience and skill as to qualify him to carry out the duties enjoined on him.

History: En. Sec. 1, Ch. 279, L. 1965.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

Title of Act

An act creating the office of director of the state water conservation board; providing for the appointment of the director of the state water conservation board by the governor; providing for the term of office, duties of the director of the state water conservation board and limitations on such duties; and providing that nothing herein contained shall impair the lawful obligations of the state water conservation board.

89-103.2. Powers and duties of director. The director shall be the chief administrative office [officer] of the state water conservation board and shall perform and execute in the name of the board all ministerial

acts required of the state water conservation board by law and shall perform and execute such other duties as may be required by said board, provided that the director shall not acquire by appropriation or otherwise any water right or interest therein and shall not acquire any real property or interest therein or mortgage or otherwise create a lien on the same or dispose of in any manner any water rights or property without specific authorization from and approval of said board. The director shall not construct or cause to be constructed or contract for the construction of any works or projects without specific authorization from and approval of said board.

History: En. Sec. 2, Ch. 279, L. 1965.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

89-103.3. Salaries of director and employees of board. The salary of the director shall be in such amount as may be specified by the legislative assembly in the appropriation to the state water conservation board. If the legislative assembly does not specify the maximum salary for the director, it shall be fixed by the state water conservation board after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states and private industry.

History: En. Sec. 3, Ch. 279, L. 1965; amd. Sec. 14, Ch. 237, L. 1967.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

Amendments

The 1967 amendment completely rewrote this section. Prior to amendment it read, "The salary of the director shall not exceed ten thousand dollars ($10,000). No salary of an employee of the board shall exceed the salary of the director."

Saving Clause

Section 4 of Ch. 279, Laws 1965 read "Nothing in this act contained shall in any way impair any obligation of the state water conservation board lawfully entered into prior to the effective date of this act."

89-103.4. Powers of Carey Land Act board and state engineer transferred to Montana water resources board. Any duties, authority or obligation conferred or imposed by law on the Carey Land Act board or the state engineer which are not in this act otherwise provided for are hereby transferred to and conferred and imposed on the state water conservation board.

History: En. Sec. 17, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

Title of Act

An act repealing sections 81-2006, 81-2008, 81-2010, 81-2012, R. C. M. 1947, thereby abolishing the office of state engineer; amending sections 81-2009, 81-2018, 82-3001, 89-702, 89-847, 89-848, 89-849, 89-851, 89-907, 89-908, 89-909, 89-912, 89-914, 89-1201, and 89-2911, R. C. M. 147, to provide for the transfer of certain duties of the state engineer to the state water conservation board; abolishing the Carey Land Act board; repealing sections 81-2001, 81-2002, 81-2003, 81-2004, 81-2005, 81-2007, 81-2013, 81-2015, 81-2017, 81-2101 through 81-2121, 81-2123 and 81-2125 through 81-2130, R. C. M. 1947; providing for the transfer of the book and records and funds of the Carey Land Act board and the office of the state engineer to the state water conservation board; and providing that nothing in this act contained shall impair the obligations of the state of

Montana under the Yellowstone River Compact or the obligations of the state of Montana, or the state water conservation board contracted prior to the effective date of this act.

89-103.5. Records and property transferred to Montana water resources board. Immediately following the effective date of this act all books, records, papers, material and supplies of all kinds and nature belonging to the Carey Land Act board, or in the office of the state engineer shall be transferred to the state water conservation board.

History: En. Sec. 18, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

89-103.6. Funds and appropriations transferred to Montana water resources board. On the effective date of this act all funds in the state treasury which were appropriated to or available to the Carey Land Act board or the state engineer shall become available to the state water conservation board to be used for the purpose of carrying out the purposes of this act and the State Water Conservation Act.

History: En. Sec. 19, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

89-103.7. Yellowstone compact obligations unimpaired. Nothing in this act contained shall in any manner impair the obligations of the state of Montana under the Yellowstone River Compact.

History: En. Sec. 20, Ch. 280, L. 1965.

89-103.8. State obligations unimpaired. Nothing in this act contained shall impair any obligations of the state of Montana or the state water conservation board or the Carey Land Act board lawfully entering to [entered into], assumed or contracted for prior to the effective date of this act.

History: En. Sec. 21, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

Repealing Clause

Section 22 of Ch. 280, Laws 1965 read "Sections 81-2001, 81-2002, 81-2003, 81-2004, 81-2005, 81-2007, 81-2013, 81-2015, 81-2017, 81-2101 through 81-2121, 81-2123 and 81-2125 through 81-2130, R. C. M. 1947, are repealed."

89-118. (349.15) Powers and duties of board—actions at law. (1). * * * [Same as parent volume.]

(2) The board shall have power to institute in any of the courts of this state, or in any other state, or in any of the federal courts of this state or any other state, any actions, suits, and special proceedings necessary to enable it to acquire, own, and hold title to lands for dam sites, reservoir sites, water rights, rights of way for diversion and distributing canals, and lateral ditches, and other means of distribution of water, and may also in all said courts institute, maintain, and prosecute to final determination any and all actions, suits and special proceedings necessary

to have the water rights adjudicated upon any stream or source of water supply from which is derived the water for such reservoir, diversion and distributing canals, lateral ditches and other means of distribution of the water; and said board may join any and all owners of waters heretofore appropriated by any person, association or corporation from any of the streams of the state of Montana, so that adjudication may be had of all surplus water upon all the streams and sources of water supply of any project so constructed by said board. All costs and expenses of such actions, suits or special proceedings shall be paid by said board out of funds provided under the authority of this act.

History: En. Sec. 14, Ch. 35, Ex. L. 1933; amd. Sec. 43, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted from subsection (2) a second paragraph reading, "The vice-chairman of the board, who shall act as secretary and treasurer, shall furnish a bond in the form and to the amount that shall be required by said board."

89-132. (349.29) Powers of board to carry out policy of state, etc.

Cross-Reference

Flood control projects of cities, towns and counties, secs. 89-3301 to 89-3313.

89-132.1. **Additional powers and duties of the board.** In addition to any other power or duty authorized or imposed by provisions of this code, the board shall be empowered, and a duty is hereby enjoined thereon, to:

(1) Gather from any source reliable information relating to Montana's water resources, and prepare therefrom a continuing comprehensive inventory of the water resources of the state. In preparing said inventory, the board may conduct studies, adopt studies made by other competent water resource groups including federal, regional, state or private agencies, perform research or employ other competent agencies to perform research on a contract basis, and hold public hearings in affected areas at which all interested parties shall be given an opportunity to appear.

(2) Formulate and adopt, and from time to time amend, extend or add to, a comprehensive, co-ordinated multiple-use water resources plan, known as the "state water plan." Said state water plan may be formulated and adopted in sections, said sections corresponding with hydrologic divisions of the state. The state water plan shall set out a progressive program for the conservation, development and utilization of the state's water resources, propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses. Before adoption of the state water plan, or any section thereof, the board shall hold public hearings in the state, or in an area of the state encompassed by a section thereof if adoption of a section is proposed. Notice of said hearing or hearings shall be published for two (2) consecutive weeks in a newspaper of general county circulation in each county encompassed by the proposed plan or section thereof at least thirty (30) days prior to said hearing.

(3) Submit to each general session of the legislature the state water plan or any section thereof or amendments, additions or revisions thereto which the board shall have formulated and adopted.

(4) Prepare a continuing inventory of the ground-water resources of the state. Said ground-water inventory shall be included in the comprehensive water resources inventory described in subsection (1) above, but shall be a separate component thereof.

(5) Publish the comprehensive inventory, the state water plan, the ground-water inventory, or any part of each, and may assess and collect a reasonable charge for said publications.

(6) Promulgate rules and regulations necessary to effect the purposes of this act.

History: En. Sec. 5, Ch. 158, L. 1967.

CHAPTER 3—WEATHER MODIFICATION ACTIVITIES

Section 89-310. Weather modification defined.
89-311. Montana water resources board responsible for administration—expenses of members.
89-312. Advisory committees—acquisition of property—acceptance and expenditure of funds.
89-313. License and permit required for weather modification and control.
89-314. Board to review applications—exemptions from fee requirements.
89-315. Issuance of license—qualifications of licensees.
89-316. Term of license—renewal.
89-317. License fee.
89-318. Issuance of permits—requirements for permit.
89-319. Separate permit for each operation.
89-320. Notice of intention to apply for permit—activities limited by terms of permit.
89-321. Contents of notice of intention.
89-322. Publication of notice of intention.
89-323. Proof of financial responsibility by applicant.
89-324. Permit fee—time of payment.
89-325. Account in agency fund—fees used to pay expenses.
89-326. Records of operations maintained by licensees.
89-327. Reports of operations.
89-328. Records and reports open to public.
89-329. Termination of licenses and permits by board.
89-330. State and agents not liable for acts of private persons.
89-331. Violation as misdemeanor—continuing violations.

89-301 to 89-309. (349.54 to 349.62) **Repealed.**

Repeal

These sections (Secs. 1 to 9, Ch. 176, L. 1935), relating to development of state resources by the state planning board, were repealed by Sec. 10, Ch. 19, Laws 1967.

89-310. Weather modification defined. As used in this act unless the context clearly indicates otherwise "weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods, the natural development of any or all atmospheric cloud forms or precipitation forms which occur in the troposphere.

History: En. Sec. 1, Ch. 20, L. 1967.

Title of Act

An act to control weather modification activities and designating the state water conservation board as the agency to administer this act.

89-311. Montana water resources board responsible for administration—expenses of members. The state water conservation board, hereafter referred to as the "board," is the state agency responsible for administration of this act. Members of the board shall receive no compensation for the performance of their duties under the provisions of this act but shall be reimbursed for expenses necessarily incurred.

History: En. Sec. 2, Ch. 20, L. 1967.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

89-312. Advisory committees—acquisition of property—acceptance and expenditure of funds. In addition to any other acts authorized by law the board may:

(1) establish advisory committees to advise with and make recommendations to the board concerning legislation, policies, administration, research, and other matters;

(2) acquire materials, equipment and facilities as are necessary to perform its duties under this act;

(3) receive any funds which may be offered or become available from federal grants or appropriations, private gifts, donations, bequests, or any other source and unless their use is restricted, may expend the funds for the administration of this act.

History: En. Sec. 3, Ch. 20, L. 1967.

89-313. License and permit required for weather modification and control. No person shall engage in activities for weather modification and control except under, and in accordance with, a license and a permit issued by the board authorizing such activities.

History: En. Sec. 4, Ch. 20, L. 1967.

89-314. Board to review applications—exemptions from fee requirements. The board shall review all applications for weather modification activity, and may provide by rule for exempting from the license and permit fees:

(1) research, development, and experiments by state and federal agencies, institutions of higher learning and bona fide nonprofit research organizations and their agents;

(2) laboratory research and experiments;

(3) activities of an emergency character for protection against fire, frost, sleet, or fog; and

(4) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail.

History: En. Sec. 5, Ch. 20, L. 1967.

89-315. Issuance of license—qualifications of licensees. The license to engage in activities for weather modification and control shall be issued, in accordance with procedures and subject to conditions the board may by rule establish to effectuate the provisions of this act, to applicants

who demonstrate competence in the field of meteorology to the satisfaction of the board. If the applicant is an organization, these requirements must be met by the individual who will be in charge of the operation for the applicant.

History: En. Sec. 6, Ch. 20, L. 1967.

89-316. Term of license—renewal. The license shall be issued for a period to expire at the end of the calendar year in which it is issued and, if the licensee possesses the qualifications necessary for the issuance of a new license, shall upon application be renewed at the expiration of the period.

History: En. Sec. 7, Ch. 20, L. 1967.

89-317. License fee. A license shall be issued or renewed only upon the payment to the board of one hundred dollars ($100) for the license or renewal.

History: En. Sec. 8, Ch. 20, L. 1967.

89-318. Issuance of permits—requirements for permit. The permits shall be issued in accordance with procedures and subject to conditions the board may by rule establish to effectuate the provisions of this act, only:

(1) if the applicant is licensed pursuant to this act;

(2) if sufficient notice of intention is published and proof of publication is filed as required in section 13 [89-322] of this act;

(3) if an applicant furnishes proof of financial responsibility in an amount to be determined by the board as required in section 14 [89-323] of this act;

(4) if the fee for the permit is paid as required in section 15 [89-324] of this act;

(5) if the weather modification and control activities to be conducted are determined by the board to be for the general welfare and the public good;

(6) if the board has held an open public hearing in the area to be affected as to such issuance.

History: En. Sec. 9, Ch. 20, L. 1967.

89-319. Separate permit for each operation. "Operation" means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce, a certain modifying effect within one (1) geographical area over one continuing time interval not exceeding one (1) year.

History: En. Sec. 10, Ch. 20, L. 1967.

89-320. Notice of intention to apply for permit—activities limited by terms of permit. Prior to undertaking any weather modification and control activities, the applicant for a permit shall file with the board, and also have published, a notice of intention. If a permit is issued, the holder

of the permit shall confine his activities to the time and area limits set forth in the notice of intention, unless modified by the board. His activities shall conform to any conditions imposed by the board. The permit may not be sold or transferred.

History: En. Sec. 11, Ch. 20, L. 1967.

89-321. Contents of notice of intention. The notice of intention shall set forth at least the following:

(1) the name and address of the applicant;

(2) the nature, purpose, and objective of the intended operation and the person or organization on whose behalf it is to be conducted;

(3) the area in which, and the approximate time during which, the operation will be conducted;

(4) the area which is intended to be affected by the operation;

(5) the materials and methods to be used in conducting the operation.

History: En. Sec. 12, Ch. 20, L. 1967.

89-322. Publication of notice of intention. (1) The applicant shall have notice of intention, or that portion thereof including the items specified in section 12 [89-321] of this act, published at least once a week for two (2) consecutive weeks in a newspaper having a general circulation and published within any county in which the operation is to be conducted and in which the affected area is located, or, if the operation is to be conducted in more than one (1) county or if the affected area is located in more than one (1) county or is located in a county other than the one in which the operation is to be conducted, then in newspapers having a general circulation and published within each of the counties.

(2) Proof of publication, made in the manner provided by law, shall be filed by the applicant with the board sooner than the sixteenth day after the date of the last publication of the notice.

History: En. Sec. 13, Ch. 20, L. 1967.

89-323. Proof of financial responsibility by applicant. Proof of financial responsibility may be furnished by an applicant by his showing, to the satisfaction of the board, ability to respond in damages for liability which might reasonably be attached to, or result from, his weather modification and control activities.

History: En. Sec. 14, Ch. 20, L. 1967.

89-324. Permit fee—time of payment. The fee to be paid by each applicant for a permit shall be equivalent to one and one-half per cent (1½%) of the estimated cost of such operation, the estimated cost to be computed by the board from the evidence available to it. The fee is due and payable to the board as of the date of issuance of the permit; however, if the applicant is able to give satisfactory security for the payment of the balance he may be permitted to commence the operation, and a permit may be issued therefor, upon the payment of not less than fifty per cent (50%) of the fee. The balance due shall be paid within three (3) months from the date of termination of the operation as prescribed in the permit.

History: En. Sec. 15, Ch. 20, L. 1967.

89-325. Account in agency fund—fees used to pay expenses. There is established an account in the agency fund to be known as the "weather modification board account." All license and permit fees paid to the board shall be deposited in this account and used to pay the expenses of administering this act.

History: En. Sec. 16, Ch. 20, L. 1967.

89-326. Records of operations maintained by licensees. Every licensee shall keep and maintain a record of all operations conducted by him under his license and each permit, showing:

(1) the method employed;

(2) type of equipment used;

(3) kinds and amounts of material used;

(4) times and places of operation of the equipment;

(5) names and addresses of all individuals participating or assisting in the operation;

(6) any other general information as the board may require.

History: En. Sec. 17, Ch. 20, L. 1967.

89-327. Reports of operations. The board shall require written reports, in a manner as it provides, of each operation for which a permit is issued. The board shall also require reports from any organization that is exempt from license and permit requirements as provided in section 5 [89-314] of this act.

History: En. Sec. 18, Ch. 20, L. 1967.

89-328. Records and reports open to public. The records and reports in the custody of the board shall be open for public examination.

History: En. Sec. 19, Ch. 20, L. 1967.

89-329. Termination of licenses and permits by board. After notice to the licensee and a reasonable opportunity for a hearing, the board may modify, suspend, revoke, or refuse to renew, any license or permit issued if it appears that the licensee no longer possesses the qualifications necessary or if it appears that the licensee has violated any of the provisions of this act; or in the case of a modification, that it is necessary for the protection of the health or the property of any person.

History: En. Sec. 20, Ch. 20, L. 1967.

89-330. State and agents not liable for acts of private persons. Nothing in this act shall be construed to impose or accept any liability or responsibility on the part of the state, the board, or any state officials or employees for any weather modification and control activities of any private person or group.

History: En. Sec. 21, Ch. 20, L. 1967.

89-331. Violation as misdemeanor—continuing violations. A person violating any provision of this act is guilty of a misdemeanor, and a con-

tinuing violation is punishable as a separate offense for each day during which it occurs.

History: En. Sec. 22, Ch. 20, L. 1967.

Separability Clause

Section 23 of Ch. 20, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 7—DAMS AND RESERVOIRS—CONSTRUCTION AND EXAMINATION OF

Section 89-702. Dams and dikes to be constructed in a secure manner—proceedings upon complaint of insecurity.

89-702. (2659) **Dams and dikes to be constructed in a secure manner—proceedings upon complaint of insecurity.** No person, association, or corporation shall construct, or cause to be constructed, a dam or dike for the purpose of accumulating, storing, appropriating, or diverting any of the waters of this state, except in a thorough, secure, and substantial manner.

Upon complaint on oath being made to the state water conservation board by three or more persons residing or having property in such location, that their homes or property would be in danger of destruction or damage in event of flood occurring on account of the breaking of any dam or dike of any reservoir within the state, and that they have reason to believe said reservoir is in an unsafe condition, or that it is being filled with water to such an extent as to render it unsafe, it shall be the duty of the state water conservation board to forthwith examine, or cause to be examined, the said reservoir. If, upon such examination, the state water conservation board shall find that said reservoir is unsafe, or is being filled with water to such an extent as to render it unsafe, it shall notify the county attorney of the county in which the reservoir is located, setting forth its findings, and the county attorney shall immediately take the necessary steps to abate the danger and make the structure safe.

In the event of either party being dissatisfied with the findings of the state water conservation board, it may take an appeal to the district court of the district wherein the reservoir is located, and said court shall hear and determine the matter at the earliest practical time, subject to the right of either party to take an appeal as in other civil cases; provided, that the judgment of the state water conservation board shall control until the final determination of the case.

History: Sec. 2139, Rev. C. 1907; amd. Sec. 1, Ch. 168, L. 1917; re-en. Sec. 2659, R. C. M. 1921; amd. Sec. 5, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer" in five places; and made minor changes in phraseology.

CHAPTER 8—WATER RIGHTS—APPROPRIATION AND ADJUDICATION

Section 89-813. Record of declaration.
89-847. Declaration of policy as to adjudication of waters of the state.
89-848. Montana water resources board may bring action to adjudicate waters.
89-849. Appointment of referee to take testimony.
89-851. Duties of Montana water resources board—scope of examination of streams—surveys, reports, maps and plats may be introduced as evidence.

89-803. (7095) Point of diversion may be changed—change of use.

Clearing Irrigation Ditch

Servient landowners did not have a right to relief where changes caused by a dozer in clearing irrigation ditch would not be considered substantial changes or material alterations if they involved minor meandering along the course to account for topographical adjustments in the terrain. Shammel v. Vogl, 144 M 354, 396 P 2d 103, 109.

89-810. (7100) Notice of appropriation.

Verification of Notice

Where verification of notice of appropriation was not completed as prescribed by this section, the notice on the record was not duly made, and was not entitled to prima facie evidentiary value under section 89-814. Shammel v. Vogl, 144 M 354, 396 P 2d 103, 111.

89-813. (7103) Record of declaration. Persons who have heretofore acquired rights to the use of water shall, within six (6) months after the publication of this chapter, file in the office of the county clerk of the county in which the water right is situated, a declaration in writing, except notice be already given of record as required by this chapter, or a declaration in writing be already filed as required by this section, containing the same facts as required in the notice provided for record in section 89-810 of this chapter, and verified as required in said last-mentioned section, in cases of notice of appropriation of water; provided, that a failure to comply with the requirements of this section shall in nowise work a forfeiture of such heretofore acquired rights, or prevent any such claimant from establishing such rights in the courts. From and after July 1, 1967, the county clerk and recorder shall forward to the water resources board a copy of any instrument of water appropriation or instrument transferring any water appropriation which is filed as provided in this section.

History: En. Sec. 9, p. 132, L. 1885; re-en. Sec. 1258, 5th Div. Comp. Stat. 1887; re-en. Sec. 1889, Civ. C. 1895; re-en. Sec. 4850, Rev. C. 1907; re-en. Sec. 7103, R. C. M. 1921; amd. Sec. 6, Ch. 158, L. 1967.

Amendments

The 1967 amendment added the last sentence.

Repealing Clause

Section 7 of Ch. 158, Laws 1967 read "Section 89-101, R. C. M. 1947, is repealed."

89-814. (7104) Record prima facie evidence.

Defective Verification of Notice of Appropriation

Where verification of notice of appropriation was not completed as prescribed by section 89-810 the notice on the record was not duly made and was not entitled to prima facie evidentiary value under this section. Shammel v. Vogl, 144 M 354, 396 P 2d 103, 111.

89-821, 89-822. (7111, 7112) Repealed.

Repeal

These sections (Secs. 10, 11, p. 58, L. 1870), relating to ditches, dikes, flumes and canals crossing highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

89-847. Declaration of policy as to adjudication of waters of the state. It is hereby declared to be the policy of this state and necessary for the welfare of the state and its citizens, that the waters of this state and especially interstate streams arising out of the state be investigated and adjudicated as soon as possible in order to protect the rights of water users in this state and negotiate interstate compacts in relation thereto, and that the state water conservation board make investigations to secure necessary information and initiate and carry on actions therefor.

History: En. Sec. 1, Ch. 185, L. 1939; amd. Sec. 6, Ch. 280, L. 1965.

Amendment

The 1965 amendment deleted "and state engineer" after "state water conservation board" in the final clause.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

89-848. Montana water resources board may bring action to adjudicate waters. The state water conservation board is hereby authorized to bring action to adjudicate the waters of any stream or of any stream and its tributaries in any county traversed by said stream.

History: En. Sec. 2, Ch. 185, L. 1939; amd. Sec. 7, Ch. 280, L. 1965.

Amendment

The 1965 amendment substituted "The state water conservation board" for "At the direction of the state water conservation board the state engineer" at the beginning of the section.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

89-849. Appointment of referee to take testimony. In said actions the state water conservation board, or in any action pending for the adjudication of a water right, any party thereto, may make application to the court for the appointment of some competent person or persons to act as a referee or referees in said cause and to take testimony therein, and the court may appoint a referee or referees who shall proceed as herein set forth. In said order of reference the court may submit to said referee or referees any or all issues of fact in said cause.

History: En. Sec. 3, Ch. 185, L. 1939; amd. Sec. 8, Ch. 280, L. 1965.

Amendment

The 1965 amendment deleted "the state engineer, upon direction of" after "In said actions" at the beginning of the section.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

89-851. Duties of Montana water resources board—scope of examination of streams—surveys, reports, maps and plats may be introduced as evidence. The state water conservation board shall either before or

after the bringing of such action do all things, make all surveys, and perform all services required by said board in the securing of all necessary information and making same available to persons who may be interested therein including the courts of this state. The state water conservation board or some qualified employee may proceed to make an examination of any stream or streams as required by said board and the works diverting therefrom, said examination to include the measurement of the discharge of said stream and of the carrying capacity of the various ditches and canals, and examination of the irrigated lands and an approximate measurement of the lands irrigated from the various ditches and canals, and to take such other steps and gather such other data and information as may be essential to the proper understanding of the relative rights of the parties interested, which said observation and measurement shall be reduced to writing and made a matter of record, and it shall be the duty of the state water conservation board to make or cause to be made such maps or plats thereof as deemed necessary or shall be required. Any or all such surveys, reports, maps and plats may be furnished to the judge of said court or the referee or referees mentioned herein and may be introduced as evidence in such proceedings; provided that the costs and expenses incurred in carrying out the provisions of this section shall be paid by the state water conservation board.

History: En. Sec. 5, Ch. 185, L. 1939; amd. Sec. 9, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer" at the beginning of the section, at the beginning of the second sentence, and near the end of the second sentence; deleted "upon direction of the state water conservation board or upon the direction of the court" before "do all things" in the first sentence; substituted "persons" for "said board or others" near the end of the first sentence; substituted "employee" for "assistant" near the beginning of the second sentence; deleted "at his office" after "matter of record" in the second sentence; deleted "by said board, and to file with said board a detailed report and copies of such maps or plats covering such information so acquired by him" at the end of the second sentence; and made other minor changes in phraseology.

CHAPTER 9—YELLOWSTONE RIVER COMPACT—RATIFICATION OF

Section 89-907. Filing written statement with Montana water resources board.
89-908. Duty to install weir or other measuring device.
89-909. Duty to measure water.
89-912. Montana water resources board to make rules and regulations.
89-914. Montana water resources board to make record available.

89-907. Filing written statement with Montana water resources board. Any person claiming an appropriative right to the use of any water of any interstate tributary which right was acquired after January 1, 1950, shall within sixty days after the approval of this act, or before he diverts any water, file with the state water conservation board at its office in Helena, Montana, a written statement containing the following information:

(a) The name of the claimant and his address.

(b) Date of appropriation or the date when the water was first applied to a beneficial use.

(c) The quantity of water claimed.

(d) The name of the stream, river or other source of water from which the diversion is made, if it has a name, and if it does not, such a description as will identify the same.

(e) The purpose for which the water is claimed and the place of intended use.

(f) The means of diversion.

(g) Whether or not a weir or other device for measuring the water intended to be diverted has been installed in his ditch or other means of diversion.

(h) If a notice of appropriation was filed with the county clerk and recorder, as provided by section 89-810, the name of the county where it was filed.

(i) Whether the appropriation was made from an adjudicated or nonadjudicated stream, river or other source of water.

The written statement shall be verified by the affidavit of the claimant or someone in his behalf, which affidavit must state that the matters and facts contained in the written statement are true.

History: En. Sec. 3, Ch. 92, L. 1953; amd. Sec. 10, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer" in the first paragraph; and made a minor change in phraseology.

89-908. Duty to install weir or other measuring device. Any person claiming an appropriative right to use any waters of any interstate tributary of the Yellowstone river which right was acquired subsequently to January 1, 1950, shall, after the approval of this act and before he diverts any such water, install in his ditch, or other means of diversion, a weir or other measuring device so that all of the water to be diverted by him can be accurately measured. The installation of a weir or other measuring device is subject to the approval of the state water conservation board, and if in its judgment such weir or other measuring device, or the installation of the same, is defective so that the water cannot be accurately measured, it may order the installation of an accurate measuring device and the claimant shall not divert any water until he complies with such order.

History: En. Sec. 4, Ch. 92, L. 1953; amd. Sec. 11, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer" in the second sentence; and made minor changes in phraseology.

89-909. Duty to measure water. It shall be the duty of every said claimant to measure all the water being diverted by him and to keep accurate records thereof on forms prescribed and furnished by the state

water conservation board, and within fifteen days after the first day of November of each year to file such written records with the state water conservation board at its office in Helena, Montana.

History: En. Sec. 5, Ch. 92, L. 1953; amd. Sec. 12, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer" in two places; and made a minor change in phraseology.

89-912. Montana water resources board to make rules and regulations. The state water conservation board shall prescribe and enforce reasonable rules and regulations consistent with this act and the Yellowstone River Compact.

History: En. Sec. 8, Ch. 92, L. 1953; amd. Sec. 13, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer."

89-914. Montana water resources board to make record available. The state water conservation board shall furnish and make available to the Yellowstone river compact commission, from the records filed in its office, all appropriative rights to the use of the waters of the interstate tributaries of the Yellowstone river in the state of Montana, acquired after January 1, 1950, the amount of the annual diversions from said interstate tributaries and any other information that its records may disclose as may be required by the Yellowstone river compact commission.

History: En. Sec. 10, Ch. 92, L. 1953; amd. Sec. 14, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer"; and made minor changes in phraseology.

CHAPTER 10—WATER COMMISSIONERS—DETERMINATION OF JOINT RIGHTS

89-1001. (7136) Appointment of water commissioners—authority, etc.

References

Allen v. Wampler, 143 M 486, 392 P 2d 82.

89-1015. (7150) Complaint by dissatisfied user—procedure on.

Purpose of Summary Proceeding

The district court had no authority in a proceeding under this section to approve a method of distribution which changed the point of diversion of water to a tract and changed the transportation ditch thereto, as the only function of the court in such a proceeding is to determine whether the water involved is being allocated in compliance with existing decrees and not to decree new water rights. Allen v. Wampler, 143 M 486, 392 P 2d 82.

CHAPTER 12—IRRIGATION DISTRICTS—ORGANIZATION

Section 89-1201. Creation of irrigation districts—percentage of titleholders required—what constitutes evidence of title—report of Montana water resources board—payment of expenses.
89-1208. Compensation of commissioners—penalty for interest in contract—bonds of commissioners.

89-1201. (7166) Creation of irrigation districts—percentage of title holders required—what constitutes evidence of title—report of Montana water resources board — payment of expenses. (1) and (2). * * * [Same as parent volume.]

(3) Before any such district shall be established, there shall be presented to the district court at the hearing on the petition for such establishment, a written report or opinion from the state water conservation board on the engineering features involved and the possibilities of water supplies accompanied by a copy of the decree of the district court showing the adjudicated water rights in said streams from which said waters are to be diverted. For this purpose, a copy of the petition provided for in section 89-1202 and of all maps and other papers filed with the same, shall be filed with the state water conservation board at the time the original petition is filed with the clerk of the district court. The expense, if any, incurred by the state water conservation board in the investigation and report upon the proposed district shall be certified, with the report, and that said board shall, within a period of one hundred twenty days from the filing of said petition with the state water conservation board, render its report, as herein provided, to the said district court, and shall be assessed as costs in said hearing, which costs shall be paid by the district in event of its establishment and in event such petition be denied, then such costs shall be paid by the petitioners; provided, however, that such report or opinion shall be not requested or obtained, and shall not be necessary, whenever it is proposed to co-operate with the United States under the federal reclamation laws heretofore or hereafter enacted, or under any act of Congress which shall permit of the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation or maintenance of constructed works, or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district laws.

History: The first irrigation district act was Ch. 70, L. 1907, appearing as Secs. 2309-2402, Rev. C. 1907; repealed by Ch. 146, L. 1909.

This section en. Sec. 1, Ch. 146, L. 1909; amd. Sec. 1, Ch. 153, L. 1917; amd. Sec. 1, Ch. 116, L. 1919; re-en. Sec. 7166, R. C. M. 1921; amd. Sec. 1, Ch. 157, L. 1923; amd. Sec. 1, Ch. 112, L. 1925; amd. Sec. 15, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

Amendment

The 1965 amendment substituted "the state water conservation board" or "said board" for "the state engineer" or "said engineer" in five places in subsection (3); deleted "(other than his salary)" which followed "incurred by the state engineer" near the beginning of the third sentence of subsection (3); and made other minor changes in phraseology in subsection (3).

89-1208. (7173) **Compensation of commissioners—penalty for interest in contract—bonds of commissioners.** The commissioners, when sitting as a board or when engaged in the business of the district, shall each receive not to exceed ten dollars ($10.00), per day for services, and, in addition thereto, their necessary expenses in attending meetings, or when otherwise engaged on district business, including premiums on qualifying bonds and any other bonds required of them in connection with their office, provided such expenses and per diem be approved by a unanimous vote of said board.

No commissioner or any other officer named in this act shall in any manner be interested directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor and his conviction thereof shall work forfeiture of his office and he shall be punished by a fine not exceeding five hundred dollars ($500.00), or by imprisonment in the county jail not exceeding six (6) months or by both such fine and imprisonment.

The commissioners of said irrigation district shall each furnish a bond in the penal sum of twenty-five hundred dollars ($2500.00), with corporate surety conditioned for the faithful performance of their duties under this act, and the secretary shall furnish bond, with corporate surety, in the sum of one thousand dollars ($1000.00), conditioned for the faithful performance of his duties pursuant to this act, and for the proper and safekeeping of the records and documents of said district, in all cases where the obligations of said district, either existing or proposed, total two hundred and fifty thousand dollars ($250,000.00) or over. In all other cases the bond for said commissioners shall be in the sum of one thousand dollars ($1000.00).

History: En. Sec. 8, Ch. 146, L. 1909; amd. Sec. 1, Ch. 120, L. 1921; re-en. Sec. 7173, R. C. M. 1921; amd. Sec. 3, Ch. 157, L. 1923; amd. Sec. 1, Ch. 116, L. 1927; amd. Sec. 1, Ch. 15, L. 1929; amd. Sec. 1, Ch. 62, L. 1965.

Amendment

The 1965 amendment increased the daily compensation of the commissioners set forth in the first paragraph from $5 to $10.

CHAPTER 17—IRRIGATION DISTRICTS—BONDS

Section 89-1708. Delivery of bonds—disposition of proceeds.

89-1708. (7215) **Delivery of bonds—disposition of proceeds.** In the event that bonds are sold for cash, they shall be delivered by the board of commissioners to the county treasurer of the county wherein the office of the district is located, who shall deliver them to the purchaser upon receipt of the purchase price therefor, and after making a complete record of the same. Delivery of the bonds sold may be made by the county treasurer to the purchaser at any place or places within or without the state of Montana, and said county treasurer may receive the proceeds of the sale of said bonds at said place or places of delivery. The county treasurer shall thereupon place the proceeds of said sale to the credit of said district; and the same shall be paid out by the county treasurer only upon

the written order of the board of commissioners, signed by the president and secretary under the seal of the district. Said proceeds shall be expended for the purpose or purposes for which said bonds were issued, and for no other. Provided, in case any portion of the funds realized from the sale of bonds are not needed immediately for the purpose for which said bonds were issued, the board of commissioners whenever, in its judgment, the same may be to the best interests of the district, shall have the power and authority to direct the investment of such funds, and any other surplus funds of the district, or any portion thereof, in interest-bearing securities of the United States, or of the state of Montana, or in interest-bearing certificates of deposit of national or state banks approved by the state superintendent of banks; provided, however, that in the event of such deposit said banks shall first furnish an indemnity bond to be approved by said board of commissioners and the state superintendent of banks. The county treasurer shall transfer to the credit of the district, and place to the credit of such fund or funds as the board of commissioners may direct, all interest received upon money or securities of the district entrusted to his care.

History: En. Sec. 45, Ch. 146, L. 1909; re-en. Sec. 7215, R. C. M. 1921; amd. Sec. 10, Ch. 157, L. 1923; amd. Sec. 1, Ch. 258, L. 1967.

Amendments

The 1967 amendment inserted "and any other surplus funds of the district" after "investment of such fund" in the fifth sentence.

CHAPTER 29—APPROPRIATION AND REGULATION OF GROUND WATER

Section 89-2911. Definitions.
89-2913. Filing—notice of appropriation—notice of completion.

89-2911. Definitions. As used in this act or regulations issued hereunder:

(a) to (e). * * * [Same as parent volume.]

(f) "Administrator" means the state water conservation board.

(g). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 237, L. 1961; amd. Sec. 16, Ch. 280, L. 1965.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer" in paragraph (f).

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

89-2913. Filing—notice of appropriation—notice of completion. (a) to (g). * * * [Same as parent volume.]

(h) Persons who have put ground water to a beneficial use, including subirrigation or other natural process, prior to January 1, 1962, shall, within four (4) years after January 1, 1962, file a declaration in the office of the county clerk of the county in which the claimed right is situated. The declaration shall be made on a form known as a "declaration of vested ground water rights" and shall contain the following information: (1) the name and address of the claimant; (2) the beneficial use

on which the claim is based; (3) the date or approximate date of the earliest beneficial use, and how continuous the use has been; (4) the amount of ground water claimed; (5) if the beneficial use has been for irrigation, the acreage and description of the lands to which such water has been applied and the name of the owner thereof; (6) the means of withdrawing such water from the ground and the location of each well or other means of withdrawal; (7) the date of commencement and completion of the construction of the well, wells or other works for withdrawal of ground water; (8) the depth of water table; (9) so far as it may be available, the type, size and depth of each well or the general specifications of any other works for the withdrawal of ground water; (10) the estimated amount of ground water withdrawn each year; (11) the log of the formations encountered in the drilling of each well; and (12) such other information of a similar nature as may be useful in carrying out the policy of this act.

The county clerk shall transmit copies to the office of the administrator, and the bureau of mines and geology. The administrator shall attend to filing copies in any other counties affected by the appropriation.

The declaration of vested ground water rights herein provided for shall be taken and received in all courts of this state as prima facie evidence of the statements therein contained.

Failure to comply with this requirement shall in no wise work a forfeiture of such rights, or prevent any such claimant from establishing such rights in the courts, but he must maintain the burden of proving such unrecorded rights. Provided, however, that persons who have filed the water well log form, provided for in sections 1 and 2 of chapter 58, session laws of Montana, 1957, shall be deemed to have complied with the requirements of this section. These latter forms may be returned to the county clerks by the administrator for the purpose of correction or for the entry of material facts necessary to fully complete the filing.

History: En. Sec. 3, Ch. 237, L. 1961; amd. Sec. 1, Ch. 21, L. 1965.

Amendment

The 1965 amendment substituted "four (4) years" for "two (2) years" in the first sentence of subsection (h).

CHAPTER 33—COUNTY AND MUNICIPAL PARTICIPATION IN FLOOD CONTROL AND WATER CONSERVATION

Section 89-3301. Participation in projects authorized—work which may be undertaken.
89-3302. Water conservation and flood control activities declared public purpose.
89-3303. Acquisition of property—condemnation.
89-3304. Acceptance of aid—assumption of remaining cost.
89-3305. Right of way and construction costs.
89-3306. Direction of project.
89-3307. Contributions to right of way costs—agreement to maintain works.
89-3308. Street or road fund used.
89-3309. Levy of special assessment—apportionment to property benefited.
89-3309.1. Charges to be levied.
89-3310. Contracts for use of railroads and highways.
89-3311. Division of work into parts—separate proceedings for parts.
89-3312. Indebtedness and bonds—bond election—tax levy to pay indebtedness.
89-3313. Powers additional.
89-3314. Provisions to provide alternative method.

89-3301. Participation in projects authorized—work which may be undertaken. Cities, towns or counties, through their councils, boards of county commissioners, or other governing body, are hereby empowered, either individually or jointly, to engage or participate in the establishment of water conservation and flood control projects within the limits of such city, town or county for the protection or reclamation of property situated therein from floods or high waters and to protect property therein from the effects of flood water, and for the conservation, development, storage, distribution, drainage and utilization of water for purposes beneficial to the district, such purposes to include but not be limited to industrial and municipal water supply, recreation and wildlife, irrigation, streamflow stabilization, household and domestic use and pollution abatement, whenever the establishment of such a water conservation and flood control system shall, in the judgment of the city council, board of county commissioners or other governing body, be conducive to public convenience and welfare. Such cities, towns or counties may in accordance with the provisions of this act individually, jointly or severally, or in co-operation with the federal or state government or any department or agency thereof, and with each other, deepen, widen, straighten, alter, change, divert or otherwise improve the watercourses within or without their limits, by constructing levees, dikes, embankments, structures, impounding reservoirs or conduits, and improve, widen and establish streets, alleys and boulevards across and adjacent to the abandoned or new channel or conduit and provide for the payment of the cost and maintenance of such project or projects under the terms of this act. The boundaries of a project once established shall not be extended without the vote of a majority of the electors residing in the area proposed to be annexed. Such electors to be determined and such election to be held in accordance with the provisions of section 89-3312 of this act.

History: En. Sec. 1, Ch. 272, L. 1965; amd. Sec. 1, Ch. 284, L. 1967.

Title of Act

An act authorizing cities, towns or counties to participate in flood control or flood prevention projects, to acquire property for such purpose, to accept federal aid for such purpose, providing for division of expenses in connection with such purpose, providing for assessments, permitting the cities, towns or counties to enter into certain contracts in pursuance of such purpose, authorizing the issuance of general obligation bonds for such purpose upon an election thereon, authorizing the state water conservation board to co-ordinate such activities when two or more counties are involved and for that purpose appropriating to the state water conservation board the sum of one dollar ($1) from the general fund of the state of Montana for the biennium commencing July 1, 1965, containing a repealing clause and containing a savings clause.

Amendments

The 1967 amendment substituted "water conservation and flood control projects" for "a flood control or flood prevention project" after "establishment of" in the first sentence, inserted "and for the conservation, development, * * * pollution abatement" before "whenever" and inserted "water conservation and" after "such a"; inserted "or state" after "federal" in the second sentence, substituted "such project or projects" for "such flood control project" before "under the terms" near the end of the second sentence and added the last sentence.

89-3302. Water conservation and flood control activities declared public purpose. Such water conservation and flood control activities, their establishment, construction, operation and maintenance as authorized by this act are declared to be for the protection of the tax base of the city,

town or county, for the protection of public roads, lands and improvements, and for the protection of the public health, sanitation, safety and for improvement of the general welfare.

History: En. Sec. 2, Ch. 272, L. 1965; amd. Sec. 2, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "water conservation and" after "Such" at the beginning of the section and inserted "for improvement of the" before "general welfare" at the end of the section.

89-3303. Acquisition of property—condemnation. Cities, towns and counties may acquire by gift, purchase or condemn and appropriate private property within the limits of the project, including the right to cross railroad right of way and property and highway right of way and property, so as not to impair the previous public use, as may be necessary to carry into effect the provisions of this act, and to provide an outlet for the watercourses, either natural or artificial, which may be deepened, widened, straightened, altered, changed, diverted or otherwise improved under the provisions of this act. All provisions of the laws of the state of Montana relating to the condemnation of lands for public purposes shall apply to the provisions thereof in and so far as applicable.

History: En. Sec. 3, Ch. 272, L. 1965; amd. Sec. 3, Ch. 284, L. 1967.

Amendments

The 1967 amendment deleted "flood control" before "project."

89-3304. Acceptance of aid—assumption of remaining cost. Cities, towns and counties may in accordance with the provisions of this act accept funds and property or other assistance, financial or otherwise, from federal, state and other public or private sources for the purpose of aiding the construction and maintenance of water conservation and flood control projects; and co-operate and contract with the state or federal government, or any department or agency thereof, in furnishing assurances and meeting local co-operation requirements of any project involving control, conservation and use of water.

History: En. Sec. 4, Ch. 272, L. 1965; amd. Sec. 4, Ch. 284, L. 1967.

Amendments

The 1967 amendment substituted "funds and property or other assistance * * * and use of water" for "federal aid in the doing of the acts provided in sections 1 and 3 hereof, and may assume such portion of the cost thereof not discharged by such federal aid" after "this act accept."

89-3305. Right of way and construction costs. The cost of all right of way acquired by purchase or condemnation may be borne by the city, town or county together with any other property rights which may be required in furtherance of such projects, and the work of actual construction and the cost thereof may be borne by the federal government.

History: En. Sec. 5, Ch. 272, L. 1965.

89-3306. Direction of project. This act contemplates that the actual direction of the project and the doing of the work in connection therewith is assumed by either the state or the federal government and the city, town or county provides and assumes the cost of necessary right of way over and above such contributions in that regard as the federal

government may choose to make. Under such limitation all appropriate portions of this act shall apply.

History: En. Sec. 6, Ch. 272, L. 1965; amd. Sec. 5, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "either the state or" after "assumed by."

89-3307. Contributions to right of way costs—agreement to maintain works. Cities, towns and counties in furtherance of such water conservation and flood control projects may accept contributions to enable them to pay for necessary right of way. They may also enter into agreement with the federal government to maintain levees, dikes, or other construction and to do all other acts required by the federal government in maintaining the work when completed.

History: En. Sec. 7, Ch. 272, L. 1965; amd. Sec. 6, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "water conservation and" before "flood control."

89-3308. Street or road fund used. The council, board of governing body shall have power to allocate a portion of the street or road fund, as the case may be, for the purpose of acquiring right of way or the operation and maintenance of completed projects.

History: En. Sec. 8, Ch. 272, L. 1965; amd. Sec. 7, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "operation and" before "maintenance"; and deleted "flood control" before "projects."

89-3309. Levy of special assessment—apportionment to property benefited. Any city, town or county that shall establish a water conservation or flood control system or both pursuant to this act may for the purpose of providing funds for the operation and maintenance thereof levy an annual special assessment against all real property in the area benefiting from such system. Such special assessment shall be levied against each lot or parcel of land in the benefited area for that portion of the money required which its area bears to the total area of all of the lands to be assessed; or said assessment may, at the option of the governing body of the city, town or county, as the case may be, be based upon the taxable valuation, as stated in the last completed county assessment roll, of the lots or parcels of land exclusive of improvements thereon, within said benefited area, in which case each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all of the lands to be assessed. Provided, however, that where the benefited area lies in more than one county or lies both within a county and also a city or town, the same method of assessment shall be used for each governing body. Such special assessments for the operation and maintenance of any system authorized by this act shall be levied as are other special improvement levies as required by law.

History: En. Sec. 9, Ch. 272, L. 1965; amd. Sec. 8, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "water conservation or" before "flood control"; inserted "or both" before "pursuant"; substituted the present second and third sentences for former second sentence which read, "Such special assessment shall be apportioned among the several lots or parcels of real property in the benefited area in proportion to the benefit conferred"; and, in the last sentence deleted "flood control" before "system."

89-3309.1. Charges to be levied. Cities, towns and counties may for the purpose of providing funds for the operation and maintenance of completed projects, fix, maintain and collect fees, rents, tolls and other charges for services rendered or facilities provided. In fixing such rate, fee, toll or rent the governing body shall charge for water furnished for household use, domestic use, irrigation use, industrial use, municipal use and for water used for streamflow stabilization a fee sufficient to pay the proportionate share of the repairs, maintenance and operating expenses as such use bears in economic value, such economic value to be determined by the governing body, to the total economic value of the total use of said facilities of the project or projects. For the benefits received by areas within the boundaries of the project or projects for flood prevention, flood control and pollution abatement, the governing body shall determine a reasonable valuation or charge, which valuation or charge shall be certified by them to the county commissioners prior to the time general taxes are levied and assessed and it shall be the obligation of the county commissioners to levy a special assessment as provided for in section 89-3309 against such area or areas sufficient to provide revenues for the repairs, maintenance and operating expenses of the project. For recreation use the governing body shall first determine the share of the costs of operation, repairs and depreciation to be charged against such uses, and from this figure shall subtract the estimated amount of fees and tolls collected for such uses; the deficiency, if any, shall be certified to the county commissioners in the same way as the charges for flood prevention, flood control, etc. and special assessments be levied by the county commissioners in the manner set out herein. The council, board of county commissioners or other governing body shall also have the authority to receive and accept appropriations and contributions from any source of either money or property or other things of value, to be held, used, and applied for the purposes in this act provided.

History: En. Sec. 9, Ch. 284, L. 1967.

Title of Act

An act amending sections 89-3301, 89-3302, 89-3303, 89-3304, 89-3306, 89-3307, 89-3308, 89-3309, 89-3310, 89-3311, R. C. M. 1947, relating to city and county flood control projects, to authorize multiple use water projects by cities and counties; to change the method of levying the special assessment to pay for such projects; authorizing cities and counties to charge fees for services and facilities provided by such projects; and providing an effective date.

89-3310. Contracts for use of railroads and highways. Any city, town or county may contract with any railroad company or with the state highway commission for the use of railroad or highway rights of way and embankments, and other railroad or highway property which can be utilized by such city, town or county for the purpose of water conservation or flood control or protection as part of its water conservation or flood control system, or both, for any period not exceeding ninety-nine (99) years.

History: En. Sec. 10, Ch. 272, L. 1965; amd. Sec. 10, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "water conservation or" before "flood control" wherever found in this section; inserted "or both" before "for any period."

89-3311. Division of work into parts—separate proceedings for parts. Whenever any city, town or county has begun a water conservation or flood control system, or both, under this act, the council, board or other governing body shall have the power to divide the work into parts, sections or districts; to omit parts of said work and to contract for any part or section separately and proceed therewith the same as if the entire work or improvements were contracted for, done or made.

History: En. Sec. 11, Ch. 272, L. 1965; amd. Sec. 11, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "water conservation or" before "flood control"; and inserted "or both" before "under this act."

89-3312. Indebtedness and bonds—bond election—tax levy to pay indebtedness. Cities, towns and counties are hereby authorized to contract indebtedness and to issue general obligation bonds to provide funds for the payment of the cost of improvements contemplated by this act by following the following procedures:

The governing body of the city, town or county may call a special election to vote upon the proposition of issuing said bonds or may submit the proposition as a special question at a regular municipal or general election. The notice of the election and the election itself shall be carried out in accordance with sections 11-2301 through 11-2330, Revised Codes of Montana, 1947, as amended, as to cities, and in accordance with sections 16-2002 through 16-2050, Revised Codes of Montana, 1947, as amended, as to the counties.

Taxes for the payment of said bonds shall be levied in accordance with sections 11-2301 through 11-2330 and sections 16-2002 through 16-2050, Revised Codes of Montana, 1947, as amended, as to cities and counties, respectively. The indebtedness incurred for the purposes herein provided shall not be considered an indebtedness for general or ordinary purposes and shall not be charged against or counted as part of the levies available for general or ordinary purposes.

History: En. Sec. 12, Ch. 272, L. 1965.

89-3313. Powers additional. This act, and each section thereof, shall be construed as granting additional power without limiting the power already existing in cities, towns and counties.

History: En. Sec. 13, Ch. 272, L. 1965.

Appropriation

Section 14 of Ch. 272, Laws 1965, appropriated $1.00 to the water conservation board from the general fund for the biennium commencing July 1, 1965.

Separability Clause

Section 15 of Ch. 272, Laws 1965 read "If a part of this act shall be declared to be invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is declared to be invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 16 of Ch. 272, Laws 1965 repealed all acts and parts of acts in conflict therewith.

89-3314. Provisions to provide alternative method. The provisions of this chapter and the methods of organization of water conservation and

flood control projects are hereby declared to be an alternative method to any other method proposed by any law now in existence or hereafter enacted for the creation of such projects and it is hereby declared that no provision hereof shall be amended or repealed by implication or otherwise as being in conflict with any existing law or future enactment unless specifically so declared by the legislature.

History: En. Sec. 12, Ch. 284, L. 1967.

Effective Date

Section 13 of Ch. 284, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

TITLE 90—WEIGHTS—MEASURES AND GRADES—TIME—MONEY

Chapter 1. Standard weights and measures—state sealer of weights and measures, 90-122.
3. Bread—standard weight and loaf, Repealed—Section 3, Chapter 252, Laws of 1957; Section 24, Chapter 16, Laws of 1965; Section 27, Chapter 307, Laws of 1967.
6. Packaged commodites offered for sale, 90-601 to 90-621.

CHAPTER 1—STANDARD WEIGHTS AND MEASURES—STATE SEALER OF WEIGHTS AND MEASURES

Section 90-122. Commissioner of agriculture ex officio sealer of weights and measures—deputies.

90-122. (4235) **Commissioner of agriculture ex officio sealer of weights and measures—deputies.** The commissioner of agriculture is hereby declared to be and is the ex officio state sealer of weights and measures. He shall appoint as many deputy sealers of weights and measures as he may deem necessary, subject to existing laws.

History: En. Sec. 1, Ch. 34, L. 1911; amd. Sec. 1, Ch. 83, L. 1913; re-en. Sec. 4235, R. C. M. 1921; amd. Sec. 1, Ch. 146, L. 1939; amd. Sec. 44, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted a final sentence reading, "Each such deputy shall give a bond to the state of Montana in the sum of one thousand dollars ($1,000.00) conditioned upon the faithful performance of his duties."

90-130. (4244) **Repealed.**

Repeal

This section (Sec. 10, Ch. 34, L. 1911; Sec. 10, Ch. 83, L. 1913; Sec. 11, Ch. 146, L. 1939), relating to inspection of commodities and packages thereof offered for sale, was repealed by Sec. 24, Ch. 160, Laws 1965. For present law, see secs. 90-601 to 90-621.

90-132. (4246) **Repealed.**

Repeal

This section (Sec. 12, Ch. 83, L. 1913; Sec. 13, Ch. 146, L. 1939; Sec. 1, Ch. 130, L. 1951), relating to the sale of commodities by weight, count or measure, was repealed by Sec. 24, Ch. 160, Laws 1965. For present law, see secs. 90-601 to 90-621.

90-144. (4258) **Repealed.**

Repeal

This section (Sec. 23, Ch. 34, L. 1911; Sec. 24, Ch. 83, L. 1913; Sec. 25, Ch. 146, L. 1939), relating to short or illegal sales, was repealed by Sec. 24, Ch. 160, Laws 1965. For present law, see sec. 90-620.

CHAPTER 3—BREAD—STANDARD WEIGHT AND LOAF

(Repealed—Section 3, Chapter 252, Laws of 1957; Section 24, Chapter 16, Laws of 1965; Section 27, Chapter 307, Laws of 1967)

90-301. (4273) **Repealed.**

Repeal

This section (Sec. 1, Ch. 155, L. 1919; Sec. 2, Ch. 252, L. 1957), relating to standard weights for bread, was repealed by Sec. 24, Ch. 160, Laws 1965. For present law, see sec. 90-614.

90-301.1. Repealed.

Repeal

This section (Sec. 1, Ch. 252, L. 1957), relating to the manufacture of bakery products, was repealed by Sec. 27, Ch. 307, Laws 1967.

90-304. (4276) Repealed.

Repeal

This section (Sec. 4, Ch. 155, L. 1919), relating to the violation of laws pertaining to the manufacture and sale of bread, was repealed by Sec. 27, Ch. 307, Laws 1967.

CHAPTER 6—PACKAGED COMMODITIES OFFERED FOR SALE

Section 90-601. Definition of terms.
90-602. Investigations.
90-603. Inspection of packages.
90-604. Stop-use, stop-removal, and removal orders.
90-605. Police powers—right of entry and stoppage.
90-606. Method of sale of commodities—general.
90-607. Declarations of quantity and origin—variations—exemptions.
90-608. Declarations of unit price on random packages.
90-609. Misleading packages.
90-610. Advertising packages for sale.
90-611. Sale by net weight.
90-612. Misrepresentation of price.
90-613. Meat, poultry, and seafood.
90-614. Bread.
90-615. Berries and small fruits.
90-616. Textile products.
90-617. Construction of contracts.
90-618. Hindering or obstructing officer—penalty.
90-619. Injunction.
90-620. Offenses and penalties.
90-621. Supplement clause.

90-601. Definition of terms. Meaning of terms when used in this act:

(1) The word "person" means both the plural and singular, as the case demands, and shall include individuals, partnerships, corporations, companies, societies, and associations.

(2) The words "sell" and "sale" shall also mean barter and exchange.

(3) The terms "state sealer" and "deputy sealer" mean, respectively, the commissioner of agriculture of the state of Montana and his deputy sealers of weights and measures of the state of Montana.

(4) The word "container" means any receptacle or carton into which a commodity is packed, or any wrappings with which any commodity is wrapped or put up for sale, or to be offered or exposed for sale.

(5) The term "intrastate commerce" means any and all commerce or trade that is begun, carried on, and completed wholly within the limits of the state of Montana, and the phrase "introduced into intrastate commerce" defines the time and place at which the first sale and delivery of a commodity is made within the state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(6) The term "commodity in package form" means commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of an auxiliary shipping

container enclosing packages that individually conform to the requirements of this act. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be construed to be commodity in package form.

History: En. Sec. 1, Ch. 160, L. 1965.

Title of Act

An act to provide for the regulation of commodities put up in packages in advance of being offered, or exposed for sale, sold, or in the process of delivery; to provide for the method of sale, advertisement, and enforcement; repealing sections 90-130, 90-132, 90-144, and 90-301, R. C. M. 1947.

90-602. Investigations. The state sealer or his deputy sealers shall investigate complaints made to him concerning violations of the provisions of this act, and shall, upon his own initiative, conduct such investigations as he deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of the provisions of this act and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions. If the state sealer or his deputy sealers have reason to believe that any person is violating any provision of this act, or any act relating to weights and measures, they shall submit the evidence to the properly constituted authority in the county in which such violation occurs, who shall thereupon prosecute the persons alleged to have violated any provision of this act, or any act relating to weights and measures, or such evidence may be submitted direct to the attorney general of the state, who shall have authority to prosecute such persons in the proper county.

History: En. Sec. 2, Ch. 160, L. 1965.

90-603. Inspection of packages. The state sealer or his deputy sealers shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether the same contain amounts represented and whether they be kept, offered, or exposed for sale, or sold, in accordance with law; and when such packages or amounts of commodities are found not to contain the amount represented, or are found to be kept, offered, or exposed for sale in violation of law, the state sealer or his deputy sealers may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the state sealer or his deputy sealers may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of such lot. No person shall:

(1) sell, or keep, offer, or expose for sale, in intrastate commerce any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless and until such package or amount of commodity has been brought into full compliance with all legal requirements, or

(2) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that

has not been brought into compliance with legal requirements, in any manner except with the specific approval of the state sealer.

History: En. Sec. 3, Ch. 160, L. 1965.

90-604. Stop-use, stop-removal, and removal orders. The state sealer or his deputy sealers shall have the power to issue stop-use orders, stop-removal orders, and removal orders with respect to packages or amounts of commodities kept, offered, or exposed for sale, sold, or in process of delivery, whenever in the course of his enforcement of the provisions of this act he deems it necessary or expedient to issue such orders, and no person shall use, remove from the premises specified, or fail to remove from the premises specified, any package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, or removal order issued under the authority of this section.

History: En. Sec. 4, Ch. 160, L. 1965.

90-605. Police powers—right of entry and stoppage. With respect to the enforcement of this act the state sealer and his deputy sealers are hereby vested with special police powers, and are authorized to arrest, without formal warrant any violator of the said acts, and to seize for use as evidence amounts or packages of commodities found to be used, retained, offered, or exposed for sale, or sold in violation of law. In the performance of his official duties, the state sealer or his deputy sealers is authorized to enter and go into or upon, without formal warrant, any structure or premises, and to stop any person whatsoever and to require him to proceed, with or without any vehicle of which he may be in charge, to some place which the sealer or his deputies may specify.

History: En. Sec. 5, Ch. 160, L. 1965.

90-606. Method of sale of commodities—general. Commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in this act, commodities not in liquid form shall be sold only by weight, by measure or length or area, or by count. Except that liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only if such methods give accurate information as to the quantity of commodity sold. And provided further, that the provisions of this section shall not apply:

(1) to commodities when sold for immediate consumption on the premises where sold,

(2) to commodities in containers standardized by a law of this state or by federal law,

(3) to vegetables when sold by the head or bunch, if the vegetables are customarily so sold,

(4) to commodities in package form when there exists a general consumer usage to express the quantity in some other manner,

(5) to concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure, or

(6) to unprocessed vegetable and animal fertilizer when sold by cubic measure.

The state sealer may issue such reasonable regulations as are necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest.

History: En. Sec. 6, Ch. 160, L. 1965.

90-607. Declarations of quantity and origin—variations—exemptions. Except as otherwise provided in this act, any commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

(1) the identity of the commodity in the package unless the same can easily be identified through the wrapper or container,

(2) the net quantity of the contents in terms of weight, measure, or count, and

(3) in the case of any package kept, offered, or exposed for sale, or sold any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor: Provided, that in connection with the declaration required under subsection two (2), neither the qualifying terms "when packed" or any words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in a package, shall be used: Provided further, that under subsection two (2) the state sealer shall, by regulation, establish:

(a) reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure,

(b) exemptions as to small packages, and

(c) exemptions as to commodities put up in variable weights or sizes intact and either customarily not sold as individual units or customarily weighed or measured at the time of sale to the consumer.

History: En. Sec. 7, Ch. 160, L. 1965.

90-608. Declarations of unit price on random packages. In addition to the declarations required by section seven (7) [90-607] of this act, any commodity in package form, the package being one of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

History: En. Sec. 8, Ch. 160, L. 1965.

90-609. Misleading packages. No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed, or filled, as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the state sealer. The state sealer or his deputy sealers, may seize any container, or its contents, or container and its contents, in violation of the provisions of this section and by order of a court having jurisdiction, the container or container and its contents or its contents, shall be condemned and destroyed or released upon such conditions as the court in its discretion may impose, to insure against their use in violation of this section.

History: En. Sec. 9, Ch. 160, L. 1965.

90-610. Advertising packages for sale. Whenever a commodity in a package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as is required by law or regulation to appear on the package. In connection with the declaration required under this section there shall be declared neither the qualifying term "when packed" nor any other words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in the package.

History: En. Sec. 10, Ch. 160, L. 1965.

90-611. Sale by net weight. The word "weight" as used in this act in connection with any commodity shall mean net weight. Whenever any commodity is sold on the basis of weight, the net weight of the commodity shall be employed, and all contracts concerning commodities shall be so construed.

History: En. Sec. 11, Ch. 160, L. 1965.

90-612. Misrepresentation of price. Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half (½) the height and width of the numerals representing the whole cents.

History: En. Sec. 12, Ch. 160, L. 1965.

90-613. Meat, poultry, and seafood. Except for immediate consumption on the premises where sold, or as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold, all meat, meat products, poultry (whole or parts),

and all seafood except shellfish, offered or exposed for sale, or sold, as food shall be offered or exposed for sale and sold by weight. When meat, poultry or seafood is combined with or associated with some other food element or elements to form either a distinctive food product or a food combination, such food product or combination shall be offered or exposed for sale and sold by weight, and the quantity representation may be the total weight of the product or combination, and a quantity representation need not be made for each of the several elements of the product or combination.

History: En. Sec. 13, Ch. 160, L. 1965.

90-614. Bread. Each loaf of bread and each unit of a twin or multiple loaf of bread, made or procured for sale, kept, offered, exposed for sale, or sold, whether or not the bread is wrapped or sliced, shall weigh one-half (½) pound, one (1) pound, one and one-half (1½) pounds, or a multiple of one (1) pound, avoirdupois weight, within reasonable variations or tolerances that shall be promulgated by regulation by the state sealer. Except that the provisions of this section shall not apply to biscuits, buns, or rolls weighing less than eight (8) ounces, or to "stale bread" sold and expressly represented at the time of sale as such, and that the marking provisions of section seven (7) [90-607] shall not apply to unwrapped loaves of bread.

History: En. Sec. 14, Ch. 160, L. 1965.

90-615. Berries and small fruits. Berries and small fruits shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of one-half (½) dry pint, one (1) dry pint, or one (1) dry quart. Provided, that the marking provisions of section seven (7) [90-607] of this act shall not apply to such containers.

History: En. Sec. 15, Ch. 160, L. 1965.

90-616. Textile products. It shall be unlawful to keep for the purpose of sale, offer or expose for sale, or sell, any textile yard goods put up or packaged in advance of sale in a bolt or roll, or any other textile product put up or packaged in advance of sale in any other unit, for either wholesale or retail sale, unless such bolt or roll, or such other unit, be definitely, plainly, and conspicuously marked to show its net measure in terms of yards or its net weight in terms of avoirdupois pounds or ounces, subject, however, to the following limitations and requirements:

(1) Any unit of twine or cordage may be marked to show its net measure in terms of feet. Ready-wound bobbins that are not sold separately shall not be required to be individually marked, but the package containing such bobbins shall be marked to show the number of bobbins contained therein and the net weight or measure of the thread on each bobbin. Any unit of sewing, basting, mending, darning, crocheting, tatting, hand-knitting, or embroidery thread or yarn, except nylon hand-knitting yarn, that is not composed in whole or in part of wool, the net weight of which is less than two ounces avoirdupois, shall be marked to show its net measure in terms of yards as unwound from the ball or from the

spool or other holder. Any retail unit of a textile product, sold only for household use, consisting of a package containing two or more similar individual units that are not sold separately, shall be marked to show the number of individual units in the package and the net weight or net measure of the product in each individual unit, but this proviso shall not apply where the individual units are separately marked. Any unit of yarn, composed in whole or in part of wool, sold to consumers for handiwork, shall be marked to show the net weight of such yarn, except that any unit of tapestry, mending, or embroidery yarn, the net measure of which does not exceed fifty yards, may be marked to show its linear measure only.

(2) The marking required by this section shall in all cases be in combination with the name and place of business of the manufacturer, packer, or distributor of the product, or a trade-mark, symbol, brand, or other mark that positively identifies such manufacturer, packer, or distributor.

(3) Reasonable tolerances shall be permitted, and these shall be included in regulations for the enforcement of the provisions of this section that shall be issued by the state sealer.

(4) The provisions of this section shall not apply to the following textile products when sold at wholesale in bulk by net weight: Cordage, agricultural bag sewing threads, twines, yarns that are to be processed, and yarns that are to be industrially converted into end use products.

History: En. Sec. 16, Ch. 160, L. 1965.

90-617. Construction of contracts. Contracts for work done, or anything to be sold by weight or measure, shall be construed according to the standards hereby adopted as the standards of this state, except where the parties have agreed upon any other calculations of measurement, and all statements and representations of any kind referring to the weight or measure of commodities or articles of merchandise shall be understood in the terms of the standards of weights and measures aforesaid.

History: En. Sec. 17, Ch. 160, L. 1965.

90-618. Hindering or obstructing officer—penalty. Any person who shall hinder or obstruct in any way the state sealer or his deputy sealers in the performance of his official duties shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty dollars ($20) or more than two hundred dollars ($200).

History: En. Sec. 18, Ch. 160, L. 1965.

90-619. Injunction. The state sealer is authorized to apply to any court of competent jurisdiction for, and such court for cause shown may grant, a temporary or permanent injunction restraining any person from violating any provision of this act.

History: En. Sec. 19, Ch. 160, L. 1965.

90-620. Offenses and penalties. Any person who by himself or by his servant or agent, or as the servant or agent of another person, performs

any one of the acts enumerated in subsections one (1) through five (5) of this section shall be guilty of a misdemeanor and, upon a first conviction thereof, shall be punished by a fine of not less than twenty dollars ($20) or more than two hundred dollars ($200); and upon a second or subsequent conviction thereof, he shall be punished by a fine of not less than fifty dollars ($50) or more than five hundred dollars ($500).

(1) Sell, or offer or expose for sale, less than the quantity he represents of any commodity, thing, or service.

(2) Take more than the quantity he represents of any commodity, thing, or service, when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined.

(3) Keep for the purpose of sale, advertise, or offer or expose for sale, or sell, any commodity, thing, or service in a condition or manner contrary to law or regulation.

(4) Violate any provision of this act or of the regulations promulgated under the provisions of this act for which a specific penalty has not been prescribed.

(5) Refuse to exhibit any article, commodity or the container of any commodity, or anything being sold or offered for sale at a given weight or quantity, or ordinarily so sold, to the state sealer or his deputy sealers, for the purpose of allowing the same to be tested and proved as to the quantity contained therein as in this act provided; or for the purpose of allowing the same to be inspected to ensure that all other requirements of this act have been complied with.

History: En. Sec. 20, Ch. 160, L. 1965.

Saving Clause

Section 21 of Ch. 160, Laws 1965 read "Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

Separability Clause

Section 22 of Ch. 160, Laws 1965 read "Severability clause. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

90-621. Supplement clause. This act is intended to be supplementary, and is not intended to repeal sections 90-140 and 90-141, R. C. M. 1947, or any other law relating to weights and measures.

History: En. Sec. 23, Ch. 160, L. 1965.

Repealing Clause

Section 24 of Ch. 160, Laws 1965 read "Repealing section. Sections 90-130, 90-132, 90-144 and 90-301, R. C. M. 1947, are repealed."

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REVISED CODES OF MONTANA

VOLUME 6

Part 2

1967 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 6 (PART 2) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 6 (PART 2) THROUGH VOLUME 420, PACIFIC REPORTER (2ND SERIES)

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NEW LAWS IN VOLUME 6 (Part 2)

For index see pocket supplement to Replacement Volume 9

ENACTED IN 1965

Fiduciary sales, validation, 91-4324.

ENACTED IN 1967

Fiduciary sales, validation, 91-4325.

AMENDMENTS IN VOLUME 6 (Part 2)

Industrial accident board, 92-104, 92-827, 92-834.
Inheritance tax, 91-4414 to 91-4418.
Occupational Disease Act, 92-1304, 92-1311, 92-1313.
State institutions, gifts to, 91-105, 91-106.
Workmen's compensation, 92-410, 92-418, 92-438, 92-614, 92-701 to 92-704, 92-706, 92-709, 92-902.

MONTANA REVISED CODES

TITLE 91—WILLS, SUCCESSION, PROBATE AND GUARDIANSHIP

Chapter 1. Wills—execution and revocation, 91-105, 91-106.
43. Probate proceedings, miscellaneous—citations—appeals, etc., 91-4324, 91-4325.
44. Inheritance tax, 91-4414 to 91-4418.

CHAPTER 1—WILLS—EXECUTION AND REVOCATION

Section 91-105. State institutions which may take by gift, bequest or grant.
91-106. Persons who may make gifts to state institution.

91-103. (6976) **Will, or part thereof, procured by fraud.**

Undue Influence

Substantial evidence of undue influence was shown where beneficiary under a second will was never close to the testator until learning of his bank account, and importuned upon him, while in a weakened condition, so that the testator rejected his friends. In re Maricich's Estate, 145 M 146, 400 P 2d 873.

The contestant has the burden of showing undue influence. In re Maricich's Estate, 145 M 146, 400 P 2d 873.

In considering undue influence, the court may take into account confidential relationship of person attempting to influence testator, his physical and mental condition as it affects his ability to withstand influence, the unnaturalness of the disposition, and the demands made upon the testator in light of the circumstances. In re Maricich's Estate, 145 M 146, 400 P 2d 873.

91-105. (6978) **State institutions which may take by gift, bequest or grant.** The state of Montana, units of the university of Montana, the state school for the deaf and blind, all institutions in the department of institutions, and any and all institutions now created or established, or which may hereafter be created or established, and supported in whole or in part by the state of Montana for any purpose, are hereby empowered and given the right to accept, receive, take, hold, own, and possess gifts, donations, grants, devises, or bequests of real or personal property from any source whatsoever; and said gifts, donations, grants, bequests, or devises may be made direct to the state of Montana, or in the name of any of said institutions, or to any officer or board of said institutions, or to any person in trust for said institutions; but in the event the same shall be made direct to any such institution, or to any officer or board of any such institution, such gift, donation, grant, devise, or bequest shall be construed as a gift, donation, grant, devise, or bequest to the state of Montana, and shall be administered and used by the state of Montana for the particular purpose for which the same was given, donated, granted, bequeathed, or devised; and in the event no particular purpose is mentioned in such gift, grant, devise, or bequest, then the same shall be used for the general sup-

port, maintenance or improvement of such institution by the state of Montana.

History: En. Sec. 1, Ch. 17, L. 1913; re-en. Sec. 6978, R. C. M. 1921; amd. Sec. 96, Ch. 199, L. 1965.

Amendment

The 1965 amendment inserted "units of" before "the university of Montana"; deleted "the state normal college, the state orphans' home" after "university of Montana"; and substituted "all institutions in the department of institutions" for "the state school of mines, the state reform school, the soldiers' home, the Montana state tuberculosis sanitarium, the state asylum for the insane, the state penitentiary" after "school for the deaf and blind."

91-106. (6979) **Persons who may make gifts to state institution.** A donation, gift, grant, bequest, devise, or testamentary disposition of property, real or personal, may be made by any person over the age of eighteen years, of sound mind, to the state of Montana, a unit of the university of Montana, the state school for deaf and blind, an institution in the department of institutions, and any and all institutions now created or established, or which may hereafter be created or established and supported, in whole or in part, by the state of Montana for any purpose. And any person, corporation, or association of persons may make any gift, donation, or grant of property, real or personal, to the state of Montana, or to any of the institutions above-named or referred to; but in the event any gift, donation, grant, devise, or bequest shall be made to any such institution, or to any officer or board of any such institution, the same shall be construed as a gift, donation, grant, devise, or bequest to the state of Montana, and shall be administered and used for the state of Montana for the particular purpose for which the same was given, donated, granted, bequeathed, or devised; and in the event no particular purpose is mentioned in such gift, grant, devise, or bequest, then the same shall be used for the general support, maintenance, or improvement of such institution by the state of Montana.

History: En. Sec. 2, Ch. 17, L. 1913; re-en. Sec. 6979, R. C. M. 1921; amd. Sec. 97, Ch. 199, L. 1965.

Amendment

The 1965 amendment inserted "a unit of" before the university of Montana; deleted "the state normal college, the state orphans' home" after "university of Montana"; and substituted "an institution in the department of institutions" for "the state school of mines, the state reform school, the soldiers' home, the state asylum for the insane, the state penitentiary" after "school for deaf and blind."

91-136. (7009) **Children or issue of children of testator, etc.**

References

In re Jones' Estate, 146 M 439, 408 P 2d 482.

CHAPTER 2—WILLS—INTERPRETATION

91-209. (7024) **Words to receive an operative construction.**

References

In re Jones' Estate, 146 M 439, 408 P 2d 482.

91-210. (7025) **Intestacy to be avoided.**

References

In re Jones' Estate, 146 M 439, 408 P 2d 482.

CHAPTER 4—SUCCESSION

91-403. (7073) Succession to and distribution of estates.

Compiler's Notes

The case of Brundy v. Canby, 50 M 454, 148 P 315, annotated under this section in the parent volume, was decided in 1915, before the 1941 amendment of this section. The reasons for the decision would no longer apply under the present version of the statute. See the first sentence, subdivision 2 of this section.

Surviving Parent

Where decedent left no surviving wife nor children and his father was dead, his mother would be the sole beneficiary of his estate under this section. Cowan v. Pacific Gamble Robinson Co., 232 F Supp 403, 405.

CHAPTER 11—PROBATE PROCEEDINGS—CONTESTING WILLS AFTER PROBATE

91-1101. (10042) The probate may be contested within six months.

Issuance of Citation

Petition contesting will was properly dismissed where the citation was not issued within the statutory period following admission of will to probate. In re Estate of Willner, — M —, 416 P 2d 24, 25.

91-1102. (10043) Citation to be issued to parties interested.

Timely Issuance of Citation

Petition contesting will was properly dismissed where the citation was not issued within statutory period following admission of will to probate. In re Estate of Willner, — M —, 416 P 2d 24, 25.

CHAPTER 13—PROBATE PROCEEDINGS—EXECUTIVES AND ADMINISTRATORS—ISSUANCE OF LETTERS TESTAMENTARY AND OF ADMINISTRATION

91-1301. (10056) To whom letters on proved will to issue.

References

In re Maricich's Estate, 145 M 146, 400 P 2d 873.

CHAPTER 27—CLAIMS AGAINST ESTATE

91-2704. (10173) Time within which claims against an estate, etc.

Mechanic's Lien

A mechanic's lien under sections 45-501 to 45-512 is not a claim arising upon a contract within the meaning of this section and the lien is not lost because creditor's claim is not filed. Hammer v. Chapin, 256 F Supp 818, 820.

CHAPTER 43—PROBATE PROCEEDINGS, MISCELLANEOUS—CITATIONS—APPEALS, ETC.

Section 91-4324. Validation of fiduciary sales before 1965.
91-4325. Validation of fiduciary sales before 1967.

91-4324. Validation of fiduciary sales before 1965. All sales, provided no action is now pending to set aside such deed or conveyance, by trustees, executors, administrators and guardians which previous to the effective date of this act, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court

having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's or guardian's deed or conveyance to such purchaser, and, in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if now executed or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale, and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator or guardian, shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 60, L. 1965.

Title of Act

An act validating deeds and conveyances in sales of land and personal property heretofore made by trustees, executors, administrators and guardians, curing defects and irregularities in such sales, containing a repealing clause.

Repealing Clause

Section 2 of Ch. 60, Laws 1965 repealed all acts and parts of acts in conflict therewith.

91-4325. Validation of fiduciary sales before 1967. All sales, provided no action is now pending to set aside such deed or conveyance, by trustees, executors, administrators and guardians which previous to January 1, 1967, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's or guardian's deed or conveyance to such purchaser, and, in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if now executed or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale, and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator or guardian, shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 182, L. 1967.

Title of Act

An act validating deeds and conveyances in sales of land and personal property made by trustees, executors, administrators and guardians prior to January 1, 1967, curing defects and irregularities in such sales.

CHAPTER 44—INHERITANCE TAX

Section 91-4414. Exemptions from first $25,000.
91-4415. When payment due—lien of tax—liability for payment—place of payment—receipts—receipt or bond required before final accounting allowed.
91-4416. Discount—interest.
91-4417. Powers of representative in collection and payment of tax—collection from legatees or distributees.
91-4418. Refunding of tax—when authorized—manner of refunding—advance payment of tax for relief from penalty and interest.

91-4401. (10400.1) **Taxes on transfer—when and how imposed.**

Tenants in Common

Where husband died after he and his wife had conveyed land owned as tenants in common to sons, reserving a life estate with right of survivorship, wife, who obtained deceased husband's one-half interest in land was subject to inheritance tax on husband's interest under section 91-4405, but sons' interests were not taxable until termination of the mother's life estate. In re Hess' Estate, 145 M 552, 403 P 2d 748.

91-4402. (10400.1) **Transfers in contemplation of death.**

Possession Postponed

Where husband and wife held real property as tenants in common, but transferred one half of the property to one son, and the other half to the other son, reserving a life estate in each piece of property with right of survivorship, on father's death sons were not subject to inheritance tax until termination of the mother's intervening life estate. In re Hess' Estate, 145 M 552, 403 P 2d 748.

91-4405. (10400.1) **Joint estates, government bonds, tenants, etc.**

Applicable Property

Since the 1951 amendment, this section, including the clause excepting from taxation property shown to have belonged to the survivor and not the decedent, applies whether the property is tangible or intangible or whether the purchase price or the actual property is the subject of the joint tenancy. In re Parks' Estate, 145 M 333, 401 P 2d 83.

Corporate Stock

Corporate stock registered in both the husband's and wife's names, but purchased by the wife, and in her possession, was not subject to inheritance tax on death of husband. In re Parks' Estate, 145 M 333, 401 P 2d 83.

Nontaxable Transfers

The 1951 amendment, stipulating that upon the death of one of the spouses, "the right of the survivor or survivors to the immediate possession or ownership is a taxable transfer," when read in conjunction with the clause excepting property shown to have belonged originally to the survivor, shows that a "transfer" is taxed, but what in reality is not a "transfer" is not taxed. In re Parks' Estate, 145 M 333, 401 P 2d 83.

References

In re Hess' Estate, 145 M 552, 403 P 2d 748.

91-4407. (10400.1) **Tax on clear market value—deductions.**

References

Cited in Salvation Army v. State, — M —, 396 P 2d 463, 466.

91-4414. (10400.4) **Exemptions from first $25,000.** The following exemptions from the tax are hereby allowed, the exemption allowed to each person, institution, association, corporation and body politic to be taken out of the first twenty-five thousand dollars passing by any such transfer to such person, institution, association, corporation or body politic:

(1). * * * [Same as parent volume.]

(2) $20,000; $10,000; $2,000 exempt, when. Property of the clear value of twenty thousand dollars ($20,000), transferred to the wife, or ten thousand dollars ($10,000) transferred to the husband of the decedent, and two thousand dollars transferred to each of the other persons described in the first subdivision of section 91-4409 shall be exempt. Such exemption to the widow shall include all her statutory dower and other allowances. Any child of the decedent shall be entitled to credit for so much of the tax paid by the widow as applied to any property which

shall thereafter be transferred by or from such widow to any such child, provided the widow does not survive said decedent to exceed ten years.

(3) and (4). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 65, L. 1923; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965.

Amendment

The 1965 amendment increased exemptions specified in the first sentence of paragraph (2) from $17,500 to $20,000 for the wife of the decedent, and from $5,000 to $10,000 for the husband of the decedent.

91-4415. (10400.5) **When payment due—lien of tax—liability for payment—place of payment—receipts—receipt or bond required before final accounting allowed.** All taxes imposed by this act shall be due and payable at the time of the death of the decedent, except as hereinafter provided; and every such tax shall be and remain a lien upon the property transferred for a period of ten years from the time of the death of the decedent, whether said death occurred before or after the effective date of this act, unless sooner paid, and the person to whom the property is transferred and the administrators, executors, and trustees of every estate so transferred shall be personally liable for such tax until its payment.

The tax shall be paid to the state treasurer or to the treasurer of the county in which the district court is situated having jurisdiction as herein provided, and if paid to the county treasurer said treasurer shall make triplicate receipts of such payment, one of which he shall immediately send to the state treasurer, whose duty it shall be to charge the county treasurer so receiving the tax, with the amount thereof, and the other receipt shall be delivered to the executor, administrator, or trustee, whereupon it shall be a proper voucher in the settlement of his accounts. One he shall keep on file in his office.

No executor, administrator, or trustee shall be entitled to a final accounting of an estate, in settlement of which a tax is due under the provisions of this act, unless he shall produce such receipt or a certified copy thereof or unless a bond shall have been filed as prescribed by section 91-4419.

History: En. Sec. 5, Ch. 65, L. 1923; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965.

Amendment

The 1965 amendment inserted "whether said death occurred before or after the effective date of this act" in the first paragraph.

91-4416. (10400.6) **Discount—interest.** If such tax is paid within eighteen (18) months from the accruing thereof, a discount of five per cent (5%) shall be allowed and deducted therefrom. The deduction of this discount of five per cent (5%) shall be accomplished by paying within the eighteen (18) month period from the date that the tax accrues an amount equal to ninety-five per cent (95%) of the total tax declared due by the person making payment. If such tax is not paid within eighteen (18) months from the accruing thereof, interest shall be charged and collected thereon at the rate of ten per cent (10%) per annum from the time the tax accrued; unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax shall not be determined and paid as herein provided, in which case interest at

the rate of six per cent (6%) shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten per cent (10%) shall be charged, provided that litigation to defeat the payment of the tax shall not be considered necessary litigation. In all cases when a bond shall be given under the provisions of section 91-4419, interest shall be charged at the rate of six per cent (6%) after one (1) year from the date of death, until the date of payment thereof.

History: En. Sec. 6, Ch. 65, L. 1923; amd. Sec. 1, Ch. 15, L. 1967.

Amendments

The 1967 amendment inserted the figures in parentheses and added the present second sentence.

91-4417. (10400.7) **Powers of representative in collection and payment of tax—collection from legatees or distributees.** Every executor, administrator or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such administrator, executor, or trustee, having in charge or in trust any legacy or property for distribution, subject to such tax, shall deduct the tax therefrom; and within thirty days therefrom shall pay over the same to the county treasurer, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof, from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this law, to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the administrator, executor, or trustee, and the tax shall remain a lien or charge on such real property for the period provided in section 91-4415, and the payment thereof shall be enforced by the executor, administrator, or trustee in the same manner that payment of the legacy might be enforced, or by the attorney general under section 91-4440. If any such legacy shall be given in money to any such person for a limited period, the administrator, executor, or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him to make an apportionment if the case require it, of the sum to be paid into the hands of such legatees, and for such further order relative thereto as the case may require.

History: En. Sec. 7, Ch. 65, L. 1923; amd. Sec. 2, Ch. 99, L. 1965.

Amendment

The 1965 amendment substituted "for the period provided in section 91-4415" for "until paid" following "charge on such real property" in the fifth sentence.

91-4418. (10400.8) **Refunding of tax—when authorized—manner of refunding—advance payment of tax for relief from penalty and interest.** If any debt shall be proved against the estate of the decedent, after the payment of any legacy or distributive share thereof, from which any such tax has been deducted, or upon which it has been paid by the person entitled to such legacy or distributive share and such person is required

by the order of the district court having jurisdiction of the tax so deducted or paid, to refund the amount of such debts or any part thereof, an equitable proportion thereof shall be repaid to such person by the executor, administrator or trustee, if the said tax has not been paid to the county treasurer or state treasurer, or by them, in the proper proportionate shares, if it has been so paid.

Any person from whom such tax is or may be due may make an estimate of and pay the same to the clerk of court, who shall receipt therefor, at any time before the same is determined by the court, and shall thereupon be relieved from any interest or penalty upon the amount so paid in the same manner as if the tax were then determined. In the event the person making payment has done so in accordance with the provisions of section 91-4416, pertaining to the allowance of a five per cent (5%) discount, the person making payment shall be relieved from any interest or penalty and shall be allowed the five per cent (5%) discount upon the amount which he so declared due as his inheritance tax liability. The tax may be declared to be due by the filing with the clerk of court of a statement of such declaration or by paying the amount estimated by the taxpayer to be due. The money shall be paid to the clerk of the district court who must deposit same with the county treasurer for credit to the clerk of the district court's deposit or trust fund until the correct amount of the tax has been determined. As soon as the correct amount of inheritance tax has been determined, any excess so paid shall be refunded to the person so paying or entitled thereto by such clerk of court out of said trust fund, and the county treasurer shall receipt for the amount of the inheritance tax so determined by the court.

History: En. Sec. 8, Ch. 65, L. 1923; amd. Sec. 1, Ch. 47, L. 1935; amd. Sec. 7, Ch. 126, L. 1963; amd. Sec. 2, Ch. 15, L. 1967.

Amendments

The 1967 amendment inserted the second and third sentences in the second paragraph.

Effective Date

Section 3 of Ch. 15, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 3, 1967.

91-4432. (10400.22) Appraisal at clear market value at time of death, etc.

References

In re Hess' Estate, 145 M 552, 403 P 2d 748.

CHAPTER 45—GUARDIAN AND WARD

91-4515. (5878) Rules of awarding custody of minors.

Welfare of Child Paramount

District court did not abuse its discretion in awarding custody of two younger children to father, who had moved to California, since children had a good home with their father and paternal grandparents, were well cared for and happy, were given more than adequate educational and religious training and had lived with their father for more than five years. Anderson v. Anderson, 145 M 244, 400 P 2d 632.

References

Hurly v. Hurly, — M —, 411 P 2d 359.

TITLE 92—WORKMEN'S COMPENSATION ACT

Chapter 1. Industrial accident board—creation and powers, 92-104.
4. Meaning of words employed in act, 92-410, 92-418, 92-438.
6. Claims—liability for injury under different plans of act, 92-614.
7. Compensation for various injuries—amount—payment, 92-701 to 92-704, 92-706, 92-709.
8. Miscellaneous regulations—powers of board—rehearings and appeals, 92-827, 92-834.
9. Compensation plan No. 1, 92-902.
13. Occupational Disease Act, 92-1304, 92-1311, 92-1313.

CHAPTER 1—INDUSTRIAL ACCIDENT BOARD—CREATION AND POWERS

Section 92-104. Industrial accident board—compensation—terms and salaries.

92-101. (2816) Name of act—what each part to contain.

References

Benoit v. Murphy Corp., 143 M 463, 391 P 2d 350.

92-104. (2819) Industrial accident board—compensation—terms and salaries. There is hereby created a board to consist of three (3) members. The commissioner of labor and industry shall be one (1) member, the director of the bureau of vocational rehabilitation shall be one (1) member, and one (1) member shall be appointed by the governor, by and with the consent of the senate. The board shall be known as the industrial accident board and shall have the powers, duties, and functions hereinafter conferred. The term of office of the appointed member of the board shall be four (4) years and until his successor shall have been appointed and confirmed. He shall receive an annual salary in such amount as may be specified by the legislative assembly in the appropriation to the industrial accident board, payable monthly and shall be chairman of the board. If the legislative assembly does not specify the maximum salary for the chairman of the board, it shall be fixed by the board after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The board shall elect one (1) of their own number as treasurer of the board.

History: En. Sec. 2, Ch. 96, L. 1915; amd. Sec. 1, Ch. 95, L. 1919; amd. Sec. 1, Ch. 254, L. 1921; re-en. Sec. 2819, R. C. M. 1921; amd. Sec. 1, Ch. 161, L. 1953; amd. Sec. 1, Ch. 231, L. 1959; amd. Sec. 1, Ch. 148, L. 1961; amd. Sec. 9, Ch. 225, L. 1963; amd. Sec. 15, Ch. 237, L. 1967.

Amendments

The 1967 amendment substituted "in such amount * * * to the industrial accident board" for "of not more than ten thousand dollars ($10,000)" in the fifth sentence; and inserted the sixth and seventh sentences.

92-106, 92-107. (2821, 2822) Repealed.

Repeal

These sections (Sec. 2, Ch. 96, L. 1915; Sec. 1, Ch. 81, L. 1941; Sec. 1, Ch. 235, L. 1947), relating to bonds of member and employees of the industrial accident commission, were repealed by Sec. 51, Ch. 177, Laws 1965.

CHAPTER 2—DEFENSES—ELECTION TO COME UNDER ACT

92-207. (2841) **Employers engaged in hazardous industries, etc.**

References

Simons v. Fisher, 146 M 526, 409 P 2d 449.

92-211. (2846) **Act applies to all inherently hazardous occupations, etc.**

References

Simons v. Fisher, 146 M 526, 409 P 2d 449.

CHAPTER 4—MEANING OF WORDS EMPLOYED IN ACT

Section 92-410. Employer defined.
92-418. Injury or injured defined.
92-438. Independent contractor defined.

92-410. (2862) **Employer defined.** "Employer" means the state and each county, city and county, city school district, irrigation district, all other districts established by law and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor and every independent contractor, firm, voluntary associations and private corporation, including any public service corporation and including an independent contractor, who has any person in service, in hazardous employment, under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2862, R. C. M. 1921; amd. Sec. 2, Ch. 121, L. 1925; amd. Sec. 1, Ch. 50, L. 1965.

Amendment

The 1965 amendment inserted "every prime contractor and every independent contractor" after "every person."

92-418. (2870) **Injury or injured defined.** "Injury" or "injured" means a tangible happening of a traumatic nature from an unexpected cause, or unusual strain, resulting in either external or internal physical harm, and such physical condition as a result therefrom and excluding disease not traceable to injury.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2870, R. C. M. 1921; amd. Sec. 6, Ch. 162, L. 1961; amd. Sec. 6, Ch. 149, L. 1965; amd. Sec. 1, Ch. 270, L. 1967.

Amendments

The 1965 amendment made no apparent change. But see Lupien v. Montana Record Publishing Co., 143 M 415, 390 P 2d 455, 457.

The 1967 amendment inserted "or unusual strain" after "an unexpected cause."

Repealing Clause

Section 2 of Ch. 270, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 270, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

Heart Attack

Where employee suffered fatal myocardial infarction at work but expert cardiologist testified that the attack was not a result of his employment, recovery was denied even though absolute proof was not possible. Ness v. Diamond Asphalt Co., 143 M 560, 393 P 2d 43.

Spinal Cancer

Workmen's compensation was properly denied where claimant's decedent's death

resulted from a spinal cancer that was neither caused by nor contributed to by accident in which decedent fractured his dorsal spine, there being no causal connection between the fracture and the cancerous tumor of the spine which caused death. Stordahl v. Rush Implement Co., — M —, 417 P 2d 95, 98. (Dissenting opinion, — M —, 417 P 2d 95, 99.)

DECISIONS UNDER FORMER LAW

Disease Not Traceable to Injury

Where claimant was being treated for bursitis prior to time she lifted box which allegedly caused injury to her shoulder, and surgeon who had operated on shoulder admitted only to the "possibility" of a supraspinatus tendon tear, there was insufficient evidence upon which either the industrial accident board or district court could base award. La Forest v. Safeway Stores, Inc., — M —, 414 P 2d 200.

Unexpected Cause

Claimant, whose routine job was lifting fifteen-pound blocks, was not entitled to compensation for back injury since strain from lifting blocks was not an injury resulting from an "unexpected cause." James v. V. K. V. Lumber Co., 145 M 466, 401 P 2d 282.

92-422. (2874) **Week defined.**

References

Simons v. C. G. Bennett Lumber Co., 146 M 129, 404 P 2d 505.

92-423. (2875) **Wages defined.**

References

Simons v. C. G. Bennett Lumber Co., 146 M 129, 404 P 2d 505; Mahlum v. Broeder, — M —, 412 P 2d 572.

92-438. (2890) **Independent contractor defined.** "An independent contractor" is one who renders service in the course of an occupation, representing the will of his employer only as the result of his work, and not as to the means by which it is accomplished. But the legal defense of independent contractor shall not bar otherwise compensable industrial accident claims against employers except when such defense is interposed on behalf of a party who has previously required the claimant's immediate employer to come within the Workmen's Compensation Act.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2890, R. C. M. 1921; amd. Sec. 1, Ch. 49, L. 1965.

Amendment

The 1965 amendment added the second sentence.

CHAPTER 6—CLAIMS—LIABILITY FOR INJURY UNDER DIFFERENT PLANS OF ACT

Section 92-614. Who liable for injuries under the different plans of act and in what amounts, extraterritorial application and reciprocity.

92-601. (2899) **Claims must be presented within what time.**

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698; Meyer v. Noble Drilling, Inc., 259 F Supp 110, 112.

92-614. (2911) **Who liable for injuries under the different plans of act and in what amounts, extraterritorial application and reciprocity.**

Every employer who shall become bound by and subject to the provisions of compensation plan number one (1), and every employer and insurer who shall become bound by and subject to the provisions of compensation plan number two (2), and the industrial accident fund where the employer of the injured employee has become bound by and subject to the provisions of compensation plan No. 3, shall be liable for the payment of compensation in the manner and to the extent hereinafter provided to an employee who has elected to come under this act, and who shall receive an injury arising out of and in the course of his employment, or, in the case of his death from such injury, to his beneficiaries, if any; or, if none, to his major dependents, if any; or, if none, to his minor dependents, if any.

If a workman employed in this state who is subject to the provisions of this act temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this act shall apply to such workman as though he were injured within this state.

If a workman from another state and his employer from another state are temporarily engaged in work within this state, this act shall not apply to them

(a) if the employer and employee are bound by the provisions of the Workmen's Compensation Law or similar law of such other state which applies to them while they are in the state of Montana, and

(b) if the Workmen's Compensation Act of this state is recognized and given effect as the exclusive remedy for workmen employed in this state who are injured while temporarily employed in such other state. A certificate from an authorized officer of the workmen's compensation department or similar agency of another state certifying that an employer of such other state is bound by the Workmen's Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the Workmen's Compensation Law of the certifying state.

The industrial accident board shall have authority, with the approval of the governor, to enter into agreements with workmen's compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this act to carry out the extraterritorial application of the workmen's compensation laws of the agreeing states.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2911, R. C. M. 1921; amd. Sec. 1, Ch. 70, L. 1967.

Amendments

The 1967 amendment inserted figures after the written numbers in the first paragraph; and added everything after the first paragraph.

CHAPTER 7—COMPENSATION FOR VARIOUS INJURIES—AMOUNT—PAYMENT

Section 92-701. Compensation for injury producing temporary total disability.
92-702. Compensation for injury producing total disability permanent in character.
92-703. For partial disability.
92-704. Compensation for injury causing death.
92-706. Medical and hospital services and such other treatment as approved by the board to be furnished.
92-709. Compensation in case of specified injuries.

92-701. (2912) **Compensation for injury producing temporary total disability.** Where the injured employee has no wife, child, father, mother, brother, or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the weekly wages received at the time of the injury, subject to a maximum compensation of thirty-seven dollars ($37.00) per week; where the injured employee has a wife, or child, or father or mother, or brother or sister residing within the United States, who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the weekly wages received at the time of the injury, subject to a maximum compensation of forty dollars ($40.00) per week; where the injured employee has a wife and one (1) child, or two (2) children, or a father and mother, or two (2) or more brothers and/or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the weekly wages received at the time of the injury, subject to a maximum compensation of forty-five dollars ($45.00) per week; where the injured employee has a wife and two (2) children, or three (3) children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the weekly wages received at the time of the injury, subject to a maximum compensation of fifty dollars ($50.00) per week; where the injured employee has a wife and three (3) children, or four (4) children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the weekly wages received at the time of his injury, subject to a maximum compensation of fifty-five dollars ($55.00) per week; where the injured employee has a wife and four (4) or more children, or five (5) or more children residing in the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66⅔%) of the weekly wages received at the time of the injury, subject to a maximum compensation of sixty dollars ($60.00) per week, and subject in all cases to a minimum compensation of thirty-four and 50/100 dollars ($34.50) per week, and subject to change when the number of beneficiaries or dependents increases by birth, or decreases. Such compensation shall be paid during the period of disability, but for the period not exceeding three hundred (300) weeks from the date of injury.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 100, L. 1919; re-en. Sec. 2912, R. C. M. 1921; amd. Sec. 10, Ch. 121, L. 1925; amd. Sec. 12, Ch. 177, L. 1929; amd. Sec. 1, Ch. 230, L. 1947; amd. Sec. 1, Ch. 7, L. 1949; amd. Sec. 1, Ch. 48, L. 1951; amd. Sec. 1, Ch. 38, L. 1953; amd. Sec. 1, Ch. 253, L. 1955; amd. Sec. 1, Ch. 234, L. 1957; amd. Sec. 1, Ch. 162, L. 1961; amd. Sec. 1, Ch. 149, L. 1965; amd. Sec. 1, Ch. 207, L. 1967.

Amendments

The 1965 amendment increased the maximum weekly compensation set forth in the various clauses from $29 to $35, from $32 to $38, from $36 to $42, from $40 to $46, from $45 to $51, and from $50 to $56; and increased the minimum weekly compensation from $25.50 to $31.50.

The 1967 amendment increased the maximum weekly compensation set forth in the various clauses from $35 to $37 per week; from $38 to $40 per week; from $42 to $45 per week; from $46 to $50 per week; from $51 to $55 per week; from $56 to $60 per week; and increased the minimum payments in all cases from $31.50 to $34.50 per week.

References

Jones v. Claridge, 145 M 326, 400 P 2d 888; Mahlum v. Broeder, — M —, 412 P 2d 572.

92-702. (2913) **Compensation for injury producing total disability permanent in character.** Where the injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the weekly wages received at the time of the injury, subject to a maximum compensation of thirty-seven dollars ($37.00) per week; where the injured employee has a wife, or child, or father, or mother, or brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the weekly wages received at the time of the injury, subject to a maximum compensation of forty dollars ($40.00) per week; where the injured employee has a wife and one (1) child, or two (2) children, or a father and mother, or two (2) or more brothers and/or sisters, residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the weekly wages received at the time of the injury, subject to a maximum compensation of forty-five dollars ($45.00) per week; where the injured employee has a wife and two (2) children, or three (3) children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the weekly wages received at the time of the injury, subject to a maximum compensation of fifty dollars ($50.00) per week; where the injured employee has a wife and three (3) children, or four (4) children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the weekly wages received at the time of the injury, subject to a maximum compensation of fifty-five dollars ($55.00) per week; where the injured employee has a wife and four (4) children, or five (5) or more children residing within the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66⅔%) of the weekly wages received at the time of the injury, subject to a maximum compensation of sixty dollars ($60.00) per week; and subject in all cases to a minimum compensation of thirty-four and 50/100 dollars ($34.50) per week; and subject to change when the number of beneficiaries or dependents increases by birth, or decreases. Such compensation shall be paid during the period of disability, but for the period not exceeding five hundred (500) weeks from the date of injury.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 5, Ch. 100, L. 1919; re-en. Sec. 2913, R. C. M. 1921; amd. Sec. 11, Ch. 121, L. 1925; amd. Sec. 13, Ch. 177, L. 1929; amd. Sec. 2, Ch. 230, L. 1947; amd. Sec. 2, Ch. 7, L. 1949; amd. Sec. 2, Ch. 48, L. 1951; amd. Sec. 2, Ch. 38, L. 1953; amd. Sec. 2, Ch. 253, L. 1955; amd. Sec. 2, Ch. 234, L. 1957; amd. Sec. 2, Ch. 162, L. 1961; amd. Sec. 2, Ch. 149, L. 1965; amd. Sec. 2, Ch. 207, L. 1967.

Amendments

The 1965 amendment increased the maximum weekly compensation set forth in the various clauses from $29 to $35, from $32 to $38, from $36 to $42, from $40 to $46, from $45 to $51, and from $50 to $56; and increased the minimum weekly compensation from $25.50 to $31.50.

The 1967 amendment increased the maximum weekly compensation set forth in the various clauses from $35 to $37 per week; from $38 to $40 per week; from $42 to $45 per week; from $46 to $50 per week; from $51 to $55 per week; from $56 to $60 per week; and increased the minimum payments in all cases from $31.50 to $34.50 per week.

References

Jones v. Claridge, 145 M 326, 400 P 2d 888; Mahlum v. Broeder, — M —, 412 P 2d 572.

92-703. (2914) **For partial disability.** Where the injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50 %) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of thirty-seven dollars ($37.00) per week; where the injured employee has a wife, or child, or father, or mother, or brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of forty dollars ($40.00) per week; where the injured employee has a wife and one (1) child, or two (2) children, or a father and mother, or two (2) or more brothers and/or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of forty-five dollars ($45.00) per week; where the injured employee has a wife and two (2) children, or three (3) children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of fifty dollars ($50.00) per week; where the injured employee has a wife and three (3) children, or four (4) children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of fifty-five dollars ($55.00) per week; where the injured employee has a wife and four (4) or more children, or five (5) or more children residing within the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66⅔%) of the difference between the wages received at the time of the injury and the wages that such injured employee is able to earn thereafter, subject to a maximum compensation of sixty dollars ($60.00) per week; not exceeding however, the maximum compensation allowed in cases of total disability, and not exceeding in amount or duration the total compensation provided in the act for the total loss of the member causing such partial disability. Such compensation shall be paid during the period of disability, not exceeding however, five hundred (500) weeks in cases of permanent partial disability, and fifty (50) weeks in cases of temporary partial disability, subject to change when the number of dependents increases by birth, or decreases, provided, however, that compensation for partial disability resulting from the loss of or injury to any member shall not be payable for a greater number of weeks than is specified in section 92-709 for the loss of such member.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 6, Ch. 100, L. 1919; re-en. Sec. 2914, R. C. M. 1921; amd. Sec. 2, Ch. 177, L. 1929; amd. Sec. 3, Ch. 230, L. 1947; amd. Sec. 3, Ch. 7, L. 1949; amd. Sec. 3, Ch. 48, L. 1951; amd. Sec. 3, Ch. 38, L. 1953; amd. Sec. 3, Ch. 253, L. 1955; amd. Sec. 3, Ch. 234, L. 1957; amd. Sec. 3, Ch. 162, L. 1961; amd. Sec. 3, Ch. 149, L. 1965; amd. Sec. 3, Ch. 207, L. 1967.

Amendments

The 1965 amendment increased the maximum weekly compensation set forth in the various clauses from $29 to $35, from $32 to $38, from $36 to $42, from $40 to $46, from $45 to $51, and from $50 to $56.

The 1967 amendment increased the maximum weekly compensation set forth in the various clauses from $35 to $37 per week; from $38 to $40 per week; from $42 to $45 per week; from $46 to $50 per week; from $51 to $55 per week; and from $56 to $60 per week.

Computation of Average Weekly Wage

This section does not incorporate the six-day week component under section 92-422 in determining pre- or post-injury earnings for partial disability, and in this manner is different from sections 92-701 and 92-702, which deal with total disability. Mahlum v. Broeder, — M —, 412 P 2d 572.

Pre- or post-injury compensation for partial disability under this section is determined by dividing a man's earnings over a reasonable period of time by the total number of days he worked, excluding all overtime and then multiplying the average daily wage by the number of days actually worked each week. Mahlum v. Broeder, — M —, 412 P 2d 572.

Earning Capacity—Loss of Earnings

Under this section, coupled with section 92-709, a claimant may have an award of temporary total disability payments during period he is entirely disabled, an award of temporary partial disability payments while his injury is still healing and he is partially able to earn wages, and an additional award for loss of prospective future earnings as the result of permanent partial disability. Jones v. Claridge, 145 M 326, 400 P 2d 888.

92-704. (2915) **Compensation for injury causing death.** For beneficiaries residing within the United States: Where decedent leaves one (1) beneficiary, fifty per centum (50 %) of the wages received at the time of the injury, subject to a maximum compensation of thirty-seven dollars ($37.00) per week; where decedent leaves two (2) beneficiaries, fifty-five per centum (55%) of the wages received at the time of the injury, subject to a maximum compensation of forty dollars ($40.00) per week; where decedent leaves three (3) beneficiaries, sixty per centum (60%) of the wages received at the time of the injury subject to a maximum compensation of forty-five dollars ($45.00) per week; where decedent leaves four (4) beneficiaries, sixty-two and one-half per centum (62½%) of the wages received at the time of the injury subject to a maximum compensation of fifty dollars ($50.00) per week; where decedent leaves five (5) beneficiaries, sixty-five per centum (65%) of the wages received at the time of the injury, subject to a maximum compensation of fifty-five dollars ($55.00) per week; where decedent leaves six (6) or more beneficiaries, sixty-six and two-thirds per centum (66⅔%) of the wages received at the time of the injury, subject to a maximum compensation of sixty dollars ($60.00) per week; and subject in all such cases to a minimum compensation of thirty-four and 50/100 dollars ($34.50) per week.

For beneficiaries residing outside of the United States: Where decedent leaves one (1) beneficiary, forty per centum (40 %) of the compensation which would be payable to such beneficiary, if residing within the United States; where decedent leaves two (2) beneficiaries, forty-five per centum (45 %) of the compensation which would be payable to such beneficiaries, if residing within the United States; where decedent leaves three (3) beneficiaries, forty-seven and one-half per centum (47½ %) of the compensa-

tion which would be payable to such beneficiaries, if residing within the United States; where decedent leaves four (4) or more beneficiaries, fifty per centum (50 %) of the compensation which would be payable to such beneficiaries, if residing within the United States.

If decedent leaves no beneficiaries, then compensation shall be payable as follows: To his major dependents, if any, residing in the United States at the date of the happening of the injury; where decedent leaves one (1) major dependent, fifty per centum (50 %) of the wages received at the time of the injury, subject to a maximum compensation of thirty-seven dollars ($37.00) per week; where decedent leaves two (2) major dependents, fifty-five per centum (55%) of the wages received at the time of the injury, subject to a maximum compensation of forty-one dollars ($41.00) per week.

If the decedent leaves no major dependents, compensation shall be payable to his minor dependents, if any, if residing within the United States at the time of the happening of the injury, as follows: Where decedent leaves one (1) minor dependent, thirty per centum (30 %) of the wages received at the time of the injury, subject to a maximum compensation of thirty-eight dollars ($38.00) per week; where decedent leaves two (2) minor dependents, thirty-five per centum (35%) of the wages received at the time of the injury, subject to a maximum compensation of forty dollars ($40.00) per week; where decedent leaves three (3) or more minor dependents, forty per centum (40%) of the wages received at the time of the injury, subject to a maximum compensation of fifty dollars ($50.00) per week.

If the decedent leaves no major or minor dependents a lump sum in the amount of three thousand and no/100 dollars ($3,000.00) shall be payable to his surviving parent or parents.

All such payments of compensation provided for in this section shall be subject to a maximum compensation of sixty dollars ($60.00) per week for a period not exceeding six hundred (600) weeks and subject to change when the number of beneficiaries or dependents increases by birth, or decreases, and provided, further, that compensation payable to major or minor dependents shall not exceed the amount of the dependency.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 7, Ch. 100, L. 1919; re-en. Sec. 2915, R. C. M. 1921; amd. Sec. 12, Ch. 121, L. 1925; amd. Sec. 14, Ch. 177, L. 1929; amd. Sec. 4, Ch. 230, L. 1947; amd. Sec. 4, Ch. 7, L. 1949; amd. Sec. 4, Ch. 48, L. 1951; amd. Sec. 4, Ch. 38, L. 1953; amd. Sec. 4, Ch. 253, L. 1955; amd. Sec. 4, Ch. 234, L. 1957; amd. Sec. 4, Ch. 162, L. 1961; amd. Sec. 4, Ch. 149, L. 1965; amd. Sec. 1, Ch. 192, L. 1957; amd. Sec. 4, Ch. 207, L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 192 and once by Ch. 207. Neither amendatory act referred to or incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section embodying the amendments made by both 1967 acts.

Amendments

The 1965 amendment increased the maximum weekly compensation set forth in the various clauses in the first paragraph from $29 to $35, from $32 to $38, from $36 to $42, from $40 to $46, from $45 to $51, and from $50 to $56; increased the minimum weekly compensation at the end of the first paragraph from $25.50 to $31.50; increased the maximum weekly compensation set forth in clauses of the third paragraph from $29 to $35 and from $32 to $38; increased the maximum weekly compensation set forth in various clauses in the fourth paragraph from $29 to $35, from $32 to $38, and from $40 to $46; and increased the maximum weekly compensa-

tion set forth in the final paragraph from $50 to $56.

Chapter 192, Laws of 1967, inserted "per centum" after "sixty-two and one-half" in the first paragraph, and increased the number of weeks of compensation to be paid for injury causing death from 500 to 600 weeks in the sixth paragraph.

Chapter 207, Laws of 1967, increased the maximum weekly compensation set forth in the various clauses in the first paragraph from $35 to $37 per week; from $38 to $40 per week; from $40 to $45 per week; from $46 to $50 per week; from $51 to $55 per week; from $56 to $60 per week; and increased minimum compensation in all cases from $31.50 to $34.50 per week; increased the maximum weekly compensation set forth in clauses of the third paragraph from $35 to $37 per week and from $38 to $41 per week; increased the maximum weekly compensation set forth in the various clauses of the fourth paragraph from $35 to $38 and from $38 to $40 and from $46 to $50; and increased the maximum compensation in the last paragraph from $56 to $60.

92-706. (2917) **Medical and hospital services and such other treatment as approved by the board to be furnished.** In addition to the compensation provided by this act and as an additional benefit separate and apart from compensation, the following shall be furnished:

During the first thirty-six (36) months after the happening of the injury, the employer or insurer or the board, as the case may be, shall furnish reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment approved by the board, not exceeding in amount the sum of twenty-five hundred dollars ($2500.00) provided however, that in cases of total disability where apportionment of such sum does not meet all hospitalization expenses, the board may allow an additional amount for additional hospital and medical expenses as in special cases it may deem proper. The employer or insurer or the board shall not be required to furnish such services if the employee refuses to allow them to be furnished or if the employee is under hospital contract as provided in section 92-610.

When such employee is under a hospital contract as above and when hospital and medical facilities or both are inadequate to the needs of an injured employee in a particular case such injured employee may, any time, be placed where adequate hospital facilities are obtainable, and the cost thereof in whole or in part shall be a legal charge against the one so contracting to furnish hospital facilities, and the amount of such charge and the necessity therefor shall be determined by the board.

And be it further provided, that where an injury arising out of and received in the course of employment necessarily results in the loss by amputation of an arm, hand, leg or foot, or the enucleation of an eye, or the loss of any of the natural teeth, the industrial accident board may, in its discretion, order that an artificial member be furnished to supply the loss of any such member or members so lost. The board may also order the replacement or repair of any prosthetic appliance damaged in an industrial accident. Such artificial member shall be furnished at the expense of the employer, operating under plan one, or the insurer, operating under plan two, or the industrial accident fund where the employer is operating under plan three. The replacement of an artificial member so furnished shall be required every five (5) years, if necessary, unless the board shall determine a replacement is needed within a shorter period.

History: En. Sec. 16, Ch. 96, L. 1915; 2917, R. C. M. 1921; amd. Sec. 14, Ch. 121, L. 1925; amd. Sec. 15, Ch. 177, L. 1929; amd. Sec. 3, Ch. 196, L. 1921; re-en. Sec.

amd. Sec. 2, Ch. 139, L. 1931; amd. Sec. 1, Ch. 229, L. 1943; amd. Sec. 2, Ch. 213, L. 1945; amd. Sec. 1, Ch. 41, L. 1949; amd. Sec. 7, Ch. 38, L. 1953; amd. Sec. 5, Ch. 253, L. 1955; amd. Sec. 6, Ch. 234, L. 1957; amd. Sec. 1, Ch. 81, L. 1965.

Amendment

The 1965 amendment inserted the second sentence in the final paragraph.

92-709. (2920) **Compensation in case of specified injuries.** In case of the following specified injuries, the compensation in lieu of any other compensation provided by this act, shall be as follows: Where the injured employee has no wife, child, father, mother, brother, or sister residing within the United States who would be entitled to compensation in case of his death, fifty per centum (50%) of the wages received at the time of the injury, subject to a maximum compensation of thirty-seven dollars ($37.00) per week; where the injured employee has a wife, or child, or father or mother, or brother or sister residing within the United States who would be entitled to compensation in case of his death, fifty-five per centum (55%) of the wages received at the time of the injury, subject to a maximum compensation of forty dollars ($40.00) per week; where the injured employee has a wife and one (1) child, or two (2) children, or a father and mother, or two (2) or more brothers and/or sisters residing within the United States who would be entitled to compensation in case of his death, sixty per centum (60%) of the wages received at the time of the injury, subject to a maximum compensation of forty-five dollars ($45.00) per week; where the injured employee has a wife and two (2) children or three (3) children residing within the United States who would be entitled to compensation in case of his death, sixty-two and one-half per centum (62½%) of the wages received at the time of injury, subject to a maximum compensation of fifty dollars ($50.00) per week; where the injured employee has a wife and three (3) children, or four (4) children residing within the United States who would be entitled to compensation in case of his death, sixty-five per centum (65%) of the wages received at the time of the injury, subject to a maximum compensation of fifty-five dollars ($55.00) per week; where the injured employee has a wife and four (4) or more children, or five (5) or more children residing within the United States who would be entitled to compensation in case of his death, sixty-six and two-thirds per centum (66⅔%) of the wages received at the time of the injury, subject to a maximum compensation of sixty dollars ($60.00) per week, subject to change when the number of beneficiaries or dependents increases by birth, or decreases, and subject in all cases to a minimum compensation of thirty-four and 50/100 dollars ($34.50) per week, and shall be paid for the following periods:

For loss of:

One arm at or near shoulder	280 weeks
One arm at the elbow	240 weeks
One arm between wrist and elbow	220 weeks
One hand	200 weeks
One thumb and the metacarpal bone thereof	75 weeks
One thumb at the proximal joint	37 weeks
One thumb at the second distal joint	25 weeks

One first finger and the metacarpal bone thereof	40 weeks
One first finger at the proximal joint	30 weeks
One first finger at the second joint	22 weeks
One first finger at the distal joint	15 weeks
One second finger and the metacarpal bone thereof	37 weeks
One second finger at the proximal joint	20 weeks
One second finger at the second joint	15 weeks
One second finger at the distal joint	8 weeks
One third finger and the metacarpal bone thereof	25 weeks
One third finger at the proximal joint	15 weeks
One third finger at the second joint	10 weeks
One third finger at the distal joint	5 weeks
One fourth finger and the metacarpal bone thereof	15 weeks
One fourth finger at the proximal joint	11 weeks
One fourth finger at the second joint	8 weeks
One fourth finger at the distal joint	6 weeks
One leg at or near the hip joint as to preclude the use of an artificial limb	300 weeks
One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb	200 weeks
One leg between knee and ankle	190 weeks
One foot at the ankle	180 weeks
One great toe with the metatarsal bone thereof	37 weeks
One great toe at the proximal joint	18 weeks
One great toe at the second joint	12 weeks
One toe other than the great toe with the metatarsal bone thereof	16 weeks
One toe other than the great toe at the proximal joint	8 weeks
One toe other than the great toe at second or distal joint	5 weeks
One eye by enucleation	165 weeks
Total blindness of one eye	140 weeks
Total loss of hearing, one ear	40 weeks
Total loss of hearing, both ears	200 weeks

Loss of vision: Where central visual acuity does not exceed 20/200 in the better eye with correcting lenses or the widest diameter of the visual field subtends an angle no greater than 20 degrees, the same as for loss of the eye.

Total loss of use: Indemnity benefits for permanent total loss of use of a member shall be the same as for loss of the member.

Partial loss or partial loss of use: Indemnity benefits for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.

In any case in which there shall be a loss, or loss of use, of more than one member as set forth in this section, not amounting to permanent total disability, the award of indemnity benefits shall be for the loss, or loss of use thereof, which awards shall run consecutively, provided, however, that the total award or compensation in no case shall exceed five hundred (500) weeks.

Disfigurement: The board may award proper and equitable indemnity benefits for serious face, head, or neck disfigurement, not to exceed twenty-five hundred dollars ($2,500.00) in addition to any other indemnity benefits payable under this section.

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two (2) thereof, in one (1) accident, in the absence of conclusive proof to the contrary shall constitute total disability, permanent in character. Provided, however, that the percentage of permanent disability caused by any single accident or injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any previous physical ailment or defect or to any injury previously suffered or any permanent disability caused thereby; provided, that no payment under this section shall be in lieu of the separate benefit of medical and hospital services.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R. C. M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967.

Amendments

The 1965 amendment increased the maximum weekly compensation set forth in the various clauses in the preliminary paragraph from $29 to $35, from $32 to $38, from $36 to $42, from $40 to $46, from $45 to $51, and from $50 to $56; and increased the minimum weekly compensation set forth at the end of the preliminary paragraph from $25.50 to $31.50.

The 1967 amendment increased the maximum weekly compensation set forth in the various clauses in the preliminary paragraph from $35 to $37 per week; from $38 to $40 per week; from $42 to $45 per week; from $46 to $50 per week; from $51 to $55 per week; from $56 to $60 per week; and increased the minimum weekly compensation set forth at the end of the preliminary paragraph from $31.50 to $34.50.

Additional Compensation

Under this section, coupled with section 92-703, a claimant may have an award of temporary total disability payments during period he is entirely disabled, an award of temporary partial disability payments while his injury is still healing and he is partially able to earn wages, and an additional award for loss of prospective future earnings as the result of permanent partial disability. Jones v. Claridge, 145 M 326, 400 P 2d 888.

Construction

The words "indemnity benefits" coupled with a "proportionate loss" anticipate estimated loss of future earning capacity irrespective of loss of wages and economic deprivation suffered by claimant and his dependents during the healing period. Jones v. Claridge, 145 M 326, 400 P 2d 888.

Date of Accrual

Indemnity benefits accrue from the date the permanent nature of the disability becomes established. Jones v. Claridge, 145 M 326, 400 P 2d 888.

CHAPTER 8—MISCELLANEOUS REGULATIONS—POWERS OF BOARD—REHEARINGS AND APPEALS

Section 92-827. Record of proceedings to be kept and testimony to be taken down—attorney's fees—transcripts on appeal—indigent claimants.
92-834. How appeal taken—notice—record—trial.

92-807. (2933) Notice of claims for injuries other than death.

References

La Forest v. Safeway Stores, Inc., — M —, 414 P 2d 200.

92-821. (2947) **Jurisdiction of board to hear disputes and controversies.**

References

State ex rel. Glacier General Assurance Co. v. District Court, 143 M 569, 393 P 2d 54.

92-825. (2951) **When a nominal disability indemnity may be awarded.**

Degree of Permanent Physical Impairment Unknown

Where the board found that a compensable impairment existed, but the degree of permanent physical impairment was unknown, it was proper to award nominal disability indemnity under this section. Benoit v. Murphy Corp., 143 M 463, 391 P 2d 350.

92-827. (2953) **Record of proceedings to be kept and testimony to be taken down—attorney's fees—transcripts on appeal—indigent claimants.** A full and complete record shall be kept of all proceedings and hearings had before the board, or any member thereof, of any formal hearing had, and all testimony produced before the board or any member thereof shall be taken down by a stenographic reporter appointed by the board, and the parties shall be entitled to be heard in person or by attorney.

Whenever the claimant or plaintiff is represented by an attorney either before the board or the courts, the industrial accident board may, in its discretion or upon the application of the claimant or plaintiff, fix the amount of the attorney fee of the attorney representing the claimant or plaintiff, and the fee fixed by the board shall be paid by claimant or plaintiff.

In cases of an action to review any order or decision of the board, a transcript of such testimony, together with all exhibits, and of the pleadings, records, and proceedings in the cause shall constitute the record of the board. Provided further, that the board must furnish a copy of such testimony, written exhibits, pleadings, records and proceedings to the claimant without cost.

After judgment on appeal to the district court, an indigent claimant, deeming himself aggrieved, may file in said court an affidavit that he does not have money, property or credit sufficient to pay for the cost of a transcript on appeal to the supreme court, and the clerk of court serve a copy by registered mail, return receipt requested, on the industrial accident board; the affidavit shall be prima facie evidence of the truth of the facts stated therein; in the event the board contest the allegations, the court shall fix a date for the hearing thereof, not less than five nor more than ten days from date of filing, and shall make its determination of the controversy, and if it be found and adjudged that the claimant does not have sufficient money, property or credit to pay for such transcript, the order shall direct the industrial accident board to furnish the same at its expense to be paid from the industrial accident administrative earmarked revenue account.

All proceedings on such appeal, including preparation, presentation and settlement of the bill of exceptions, shall be continued pending determination of the controversy.

If the board does not contest the allegations of the claimant's affidavit within ten days from receipt, it shall be deemed in default and the court shall make its order in favor of claimant on expiration of such period.

History: En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2953, R. C. M. 1921; amd. Sec. 4, Ch. 139, L. 1931; amd. Sec. 3, Ch. 162, L. 1937; amd. Sec. 1, Ch. 170, L. 1959; amd. Sec. 1, Ch. 111, L. 1965.

Amendment

The 1965 amendment added the fourth, fifth and sixth paragraphs.

Repealing Clause

Section 2 of Ch. 111, Laws 1965 repealed all acts and parts of acts in conflict therewith.

92-829. (2955) Application for rehearing.

Court Required to Make Findings of Fact and Conclusions of Law

While there is no rule of law requiring the district court to adopt the proposed findings and conclusions of either litigant on appeal in a workmen's compensation case, and the court may request that the litigants submit such findings, or litigants may submit them without a request by the court, it is clear that the legislature intended that the court make findings of fact and conclusions of law in all cases on appeal. Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

References

Simons v. C. G. Bennett Lumber Co., 146 M 129, 404 P 2d 505.

92-830. (2956) Board may at any time diminish or increase an award.

References

State ex rel. Glacier General Assurance Co. v. District Court, 143 M 569, 393 P 2d 54.

92-833. (2959) Appeal to district court.

Jurisdiction of District Court

District court had no jurisdiction to hear claimant's appeal from the decision of the industrial accident board when the court's seat was in neither the county of the employer's residence nor the county of the place of the accident. State ex rel. Glacier General Assurance Co. v. District Court, 143 M 569, 393 P 2d 54.

92-834. (2960) How appeal taken—notice—record—trial. Said appeal shall be taken by serving a written notice of said appeal upon the chairman of such industrial accident commission, or upon any other member thereof, which said service shall be made by the delivery of a copy of such notice to such chairman or member, and filing the original with the clerk of the court to which said appeal is taken. A copy of such notice must also be served upon the adversary party, if there be any, by mailing the same to said adversary party to such address of such party as said party shall have left with the board. If such party shall have left no address with the board, then no service upon such party shall be required. The order of filing and service of said notice is immaterial. Immediately upon service upon said board of said notice, the said board shall certify to said district court the entire record and proceedings, including all testimony and evidence taken by said board, with the clerk of said district court. Immediately upon the return of such certified record, the district court shall fix a day for the hearing of said cause, and shall cause notice to be served upon the board and upon the appellant, and also upon the adversary party, if there be any. The court may, upon the hearing, for good cause shown, permit additional evidence to be introduced, but, in the absence of such permission from the court, the cause shall be heard on the record of the board, as certified to the court by it. The trial of the matter shall be de novo, and upon such trial the court shall determine whether or not the board regularly pursued its authority, and whether or not the findings of the board ought to be sustained, and whether or not such findings are reasonable under all the circumstances of the case.

History: En. Sec. 22, Ch. 96, L. 1915; re-en. Sec. 2960, R. C. M. 1921; amd. Sec. 7, Ch. 149, L. 1965.

Amendment

The 1965 amendment made no apparent change.

Repealing Clause

Section 8 of Ch. 149, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 9 of Ch. 149, Laws 1965 read "This act shall be in full force and effect from and after the 1st day of July, 1965."

Court Required to Make Findings of Fact and Conclusions of Law

While there is no rule of law requiring the district court to adopt the proposed findings and conclusions of either litigant on appeal in a workmen's compensation case, and the court may request that the litigants submit such findings, or litigants may submit them without a request by the court, it is clear that the legislature intended that the court make findings of fact and conclusions of law in all cases on appeal. Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

References

Simons v. C. G. Bennett Lumber Co., 146 M 129, 404 P 2d 505.

92-835. (2961) Appearances—setting aside conclusions, orders, etc.

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

92-838. (2964) Court to give liberal construction to act.

Failure to List Children in Claim

Where claimant failed to list all of his children in his claim for compensation it did not constitute a waiver of the claim. Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

References

State ex rel. Glacier General Assurance Co. v. District Court, 143 M 569, 393 P 2d 54.

CHAPTER 9—COMPENSATION PLAN NO. 1

Section 92-902. Proof of solvency of employer electing plan No. 1 to be filed.

92-902. (2971) Proof of solvency of employer electing plan No. 1 to be filed.

Every such employer now or hereafter engaged in the state of Montana, in the industries, trades, works, occupations, or employments herein mentioned, and who shall have elected to be bound by such compensation plan No. 1, shall file such proof of his solvency within the time and in such form as may be prescribed by the rules or orders of the board.

The board shall levy an assessment in the amount of not to exceed two hundredths of one per cent of the annual payroll of such employer in Montana, for the preceding fiscal year, which assessment shall be paid to the board by said employer at the time of filing of proof of solvency.

No assessment shall be in an amount less than seventy-five dollars ($75.00).

If such employer had no payroll in Montana for the entire preceding fiscal year, the assessment shall be based on the estimated payroll for the year in which election is made.

The treasurer of the board shall pay the amounts so collected into the state treasury.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2971, R. C. M. 1921; amd. Sec. 5, Ch. 139, L. 1931; amd. Sec. 3, Ch. 176, L. 1957; amd. Sec. 169, Ch. 147, L. 1963; amd. Sec. 1, Ch. 183, L. 1965.

Amendment

The 1965 amendment increased the minimum assessment specified in the third paragraph from $10 to $75.

Repealing Clause

Section 2 of Ch. 183, Laws 1965 repealed all acts and parts of acts in conflict therewith.

CHAPTER 10—COMPENSATION PLAN NO. 2

92-1002. (2979) Duty of employer electing plan No. 2, etc.

References

Meyer v. Noble Drilling, Inc., 259 F Supp 110, 115.

92-1004. (2981) Agreement to be contained in policies of insurance, etc.

Cross-References

Policy to provide for freedom of choice of professional practitioner, sec. 40-4108.

CHAPTER 11—COMPENSATION PLAN NO. 3

92-1103. (2991) Contract or policy of insurance—payment of premium.

Cross-References

Policy to provide for freedom of choice of professional practitioner, sec. 40-4108.

CHAPTER 13—OCCUPATIONAL DISEASE ACT

Section 92-1304. Occupational disease.
92-1311. Payment of compensation—exceptions and limitations.
92-1313. Notice of disability or death.

92-1304. Occupational disease. The following diseases only shall be termed occupational diseases.

1. Silicosis, asbestosis.

2 to 6. * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 155, L. 1959; amd. Sec. 1, Ch. 95, L. 1965.

Amendment

The 1965 amendment added "asbestosis" to item 1.

Repealing Clause

Section 2 of Ch. 95, Laws 1965 repealed all acts and parts of acts in conflict therewith.

92-1311. Payment of compensation—exceptions and limitations. A. Compensation shall be paid to every employee who becomes disabled by reason of occupational disease arising out of his employment, subject to the following conditions; and when claims are presented and notices given in accordance with the limitations of sections 92-1312 and 92-1313.

1. * * * [Same as parent volume.]

2. No compensation shall be paid for a disease other than silicosis or due to ionizing radiation unless total disability results within one hundred twenty (120) days from the last day upon which the employee

actually worked for the employer against whom compensation is claimed; provided that the board upon good cause shown may waive this limitation in the interest of justice, but in any case said period may not be extended to more than one year from the date of last employment by the said employer.

3 to 5. * * * [Same as parent volume.]

B. The compensation shall be paid to the beneficiary and dependents of every employee covered by this act in cases where death results from an occupational disease arising out of his employment subject to the following conditions.

1 to 3. * * * [Same as parent volume.]

4. No compensation shall be paid for death from any occupational disease other than silicosis or due to ionizing radiation unless death results within one (1) year from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from an occupational disease other than silicosis or ionizing radiation for which compensation has been paid or awarded, or for which a claim, compensable but for such death, is on file with the board. In such cases compensation shall be paid if death results within three (3) years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

5. * * * [Same as parent volume.]

C. * * * [Same as parent volume.]

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965.

Amendment

The 1965 amendment inserted "or due to ionizing radiation" following "silicosis" in paragraphs A 2 and B 4.

92-1313. Notice of disability or death. The provisions of section 92-807 shall not apply to cases of disability or death from occupational diseases as in this act defined.

Notice of disability or death in respect to which compensation is payable under this act, except disability or death resulting from silicosis, shall be given to the employer, the insurer, or the board, as the case may be, within thirty (30) days after the employee, his beneficiaries, or his dependents knew or should have known the nature of the impairment or cause of death and its relationship to the employment, but in no event, except in the case of disability or death due to ionizing radiation, shall notice be filed more than one year after the last day upon which the employee actually worked for the employer against whom compensation is claimed.

In cases of disability resulting from silicosis which are compensable under this act, notice of such disability shall be given to the employer, the insurer, or the board, as the case may be, within thirty (30) days after the employee knew or should have known of the nature of the impairment and its relationship to employment, but in no event shall such notice be filed more than four (4) years after the last date upon

which the employee actually worked for the employer against whom compensation is claimed.

In cases of a death from silicosis which is compensable under this act, notice of such death shall be given to the employer, the insurer, or the board, within thirty (30) days after the employee's beneficiaries or his dependents knew or should have known of the cause of death and its relationship to the employment, but in no event shall such notice be filed more than one (1) year after such death.

Such notice shall be valid only if filed in writing on forms to be furnished by the board, and shall contain the name and address of the employee and a statement of the time, place, nature, and cause of the disability or death, and shall be signed by the employee or by some other person on his behalf; or in case of death by any person claiming to be entitled to compensation for such death or by some person on his behalf.

Except if death occurs during the period of total disability described in section 92-1311, B.3., in which case the period of notice may be extended to the term of seven (7) years from the last day of said employment.

History: En. Sec. 13, Ch. 155, L. 1959; amd. Sec. 2, Ch. 92, L. 1965.

Amendment

The 1965 amendment inserted "except in the case of disability or death due to ionizing radiation" in the second paragraph.

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1967 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 7 OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 7 THROUGH VOLUME 420, PACIFIC REPORTER (2ND SERIES)

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NEW LAWS IN VOLUME 7

For index see pocket supplement to Replacement Volume 9

ENACTED IN 1965

Attachment released if no proceedings taken in action, 93-4331.1.
Exemptions from execution, waiver in unsecured note unenforceable, 93-5813.1.
Judicial sales, validation, 93-5846.
Recording of judgment as notice despite defect in proceedings, 93-5710.1.

ENACTED IN 1967

Judges' retirement system, 93-1107 to 93-1132.
Justices' courts, pleadings, 93-6802.1, 93-6802.2.
Recording of judgment before 1967 as notice, 93-5710.2.
Validation of judicial sales before 1967, 93-5846.

AMENDMENTS IN VOLUME 7

Attachment, undertaking, 93-4304.
Change of venue, M. R. Civ. P., Rule 12(b).
Court reporters, 93-1906.
Default judgment, M. R. Civ. P., Rule 55(b).
Dismissal of action on failure to serve summons, M. R. Civ. P., Rule 41(e).
Disqualification of judge, 93-901.
District court, judges' salaries, 93-303.
Eminent domain, 93-9913.
Interrogatories to parties, M. R. Civ. P., Rule 33.
Jurisdiction of persons in courts, M. R. Civ. P., Rules 4 A, 4 B.
Juror's qualifications, 93-1301.
Justices' courts, 93-6711, 93-7712.
Pleading of defenses, M. R. Civ. P., Rule 12(b).
    Affirmative defenses, M. R. Civ. P., Rule 8(c).
    Denials, M. R. Civ. P., Rule 8(b).
Receivers, appointment, 93-4401.
Rules of Civil Procedure,
    Amendment procedure, M. R. Civ. P., Rule 86(a).
    Statutes superseded, M. R. Civ. P., Rule 86(b), Tables B and C.
Service of process, M. R. Civ. P., Rule 4 D.
Summary judgment proceedings, M. R. Civ. P., Rule 56(c).
Summons, form and issuance, M. R. Civ. P., Rule 4 C.

MONTANA REVISED CODES

TITLE 93—CIVIL PROCEDURE

Chapter 3. District courts, 93-303.
9. Disqualification of judicial officers, 93-901.
11. Miscellaneous provisions respecting courts and judicial officers, 93-1107 to 93-1132.
13. Jurors—qualifications and exemptions, 93-1301.
19. Court reporters, 93-1906.
43. Attachment, 93-4304, 93-4331.1.
44. Receivers, 93-4401.
57. Judgment—manner of giving and entry—judgment roll and docket—lien of, 93-5708, 93-5710.1, 93-5710.2.
58. The execution, 93-5813.1, 93-5846.
67. Justices' courts—manner of commencing actions in, 93-6711.
68. Justices' courts—pleadings in, 93-6802.1, 93-6802.2.
77. Justices' courts—general provisions, 93-7712.
80. Supreme court—appeals to, 93-8001, 93-8002, 93-8013.
99. Eminent domain, 93-9905, 93-9913.
2701. Montana Rules of Civil Procedure, Rules 4, 8(b), (c), 12(b), 33, 41(e), 55(b) (2), 56(c), 72, 86(a), (b), Tables B, C.
3001. Montana Rules of Appellate Civil Procedure, Rules 1 to 43, Appendix of Forms, Tables A to C.

CHAPTER 2—SUPREME COURT

93-216. (8805) Powers and duties of supreme court on appeals.

Equity Case

In an equity case it is proper for the appellate court to pry into the factual issues of the case and the decision must hinge on factual observations unless the case is returned to the lower court for further proceedings. Jenson v. Olson, 144 M 224, 395 P 2d 465, 468.

The supreme court in reviewing an equity case will review the law therein and also will review the evidence to that extent necessary to ascertain whether the findings of fact by the trial court are substantially supported and sufficient to support the conclusions of law derived therefrom. Bender v. Bender, 144 M 470, 397 P 2d 957.

References

Kyser v. Hiebert, 142 M 466, 385 P 2d 90; State ex rel. Keast v. Krieg, — M —, 410 P 2d 710.

CHAPTER 3—DISTRICT COURTS

Section 93-303. Salaries of district judges.

93-303. (8814) Salaries of district judges. The annual salary of each district judge shall be fifteen thousand dollars ($15,000).

History: En. Sec. 1, Ch. 176, L. 1919; re-en. Sec. 8814, R. C. M. 1921; amd. Sec. 1, Ch. 114, L. 1947; amd. Sec. 1, Ch. 84, L. 1951; amd. Sec. 1, Ch. 247, L. 1955; amd. Sec. 1, Ch. 198, L. 1959; amd. Sec. 1, Ch. 187, L. 1961; amd. Sec. 2, Ch. 212, L. 1963; amd. Sec. 2, Ch. 308, L. 1967.

Amendments

The 1967 amendment increased from $14,000 to $15,000 the annual salary for district judges.

Repealing Clause

Section 3 of Ch. 308, Laws 1967 repealed all acts and parts of acts in conflict therewith.

93-320. (8831) Process.

References

Beavers v. Rankin, 142 M 570, 385 P 2d 640.

CHAPTER 4—JUSTICES' AND POLICE COURTS

93-407. (8839) Repealed.

Repeal

This section (Sec. 1, p. 99, L. 1901; Sec. 1, Ch. 35, L. 1921), relating to the oath and bond of the justice of the peace, was repealed by Sec. 10, Ch. 68, Laws 1967.

93-410. (8842) Criminal jurisdiction.

Driving While under Influence of Intoxicating Liquor

Since the offense of driving a vehicle on a highway while under the influence of intoxicating liquor in violation of section 32-2142 is a misdemeanor, it falls within the jurisdiction of a justice of the peace under this section. Wilson v. Brodie, — M —, 419 P 2d 306, 308.

CHAPTER 9—DISQUALIFICATION OF JUDICIAL OFFICERS

Section 93-901. Cases in which judge may be disqualified—calling in another judge.

93-901. (8868) Cases in which judge may be disqualified—calling in another judge. Any justice, judge, or justice of the peace must not sit or act as such in any action or proceeding:

1. To which he is a party, or in which he is interested;

2. When he is related to either party by consanguinity or affinity within the sixth degree, computed according to the rules of law;

3. When he has been attorney or counsel for either party in the action or proceeding, or when he rendered or made the judgment, order, or decision appealed from;

4. When either party makes and files an affidavit as hereinafter provided, that he has reason to believe, and does believe, he cannot have a fair and impartial hearing or trial before a district judge. Such affidavit may be made by any party to an action, motion, or proceeding, personally, or by his attorney or agent, and shall be filed with the clerk of the district court in which the same may be pending.

In any judicial district having only one judge the affidavit of disqualification with reference to any action or proceeding to be tried before a jury must be filed at least one day before the day appointed or fixed by the court for setting the trial calendar; provided, however, this limitation shall not apply unless notice of such setting date shall be given to all parties by the clerk of the district court at least fifteen (15) days prior thereto. In all other cases the affidavit must be filed at least fifteen (15) days before the day appointed or fixed for the hearing or trial of any such action, motion, or proceeding (provided such party shall have had notice of the hearing of such action, motion, or proceeding for at least the period of fifteen (15) days and in case he shall not have had notice for such length of time, he shall file such affidavit immediately upon

receiving such notice). Upon the filing of the affidavit, the judge as to whom said disqualification is averred shall be without authority to act further in the action, motion, or proceeding, but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of business, the power of transferring the action or proceeding to some other court nor to the power of calling in another district judge to sit and act in such action or proceeding, providing that no judge shall so arrange the calendar as to defeat the purposes of this section. No more than two judges can be disqualified in said action or proceeding, at the instance of the plaintiff, and no more than two at the instance of the defendant, in said action or proceeding, and this limitation shall apply however many parties or persons in interest may be plaintiffs or defendants in such action or proceeding. If there be more than one judge in any judicial district in which said affidavit is made and filed, upon the first disqualification of a judge in the cause, another judge, residing in the judicial district wherein the affidavit is made and filed, must be called in to preside in such action, motion or proceeding; upon the second or any subsequent disqualification of a judge in the cause, a district judge of another judicial district of the state must be called in to preside in such action, motion, or proceeding, or the action, motion, or proceeding transferred to a district judge of another judicial district of the state; when another judge has assumed jurisdiction of an action, motion, or proceeding, the clerk of the district court in which the same was pending, shall at once notify the parties or their attorneys of record in the same, either personally or by registered mail, of the name of the judge called in, or to whom such action, motion, or proceeding was transferred. Such second or subsequent affidavit of disqualification shall be filed with the clerk of the district court in which such action, motion or proceeding may be pending within three days after the party or his attorney of record, filing such affidavit, has received notice as to the judge assuming jurisdiction of such action, motion, or proceeding.

History: Ap. p. Sec. 453, p. 134, Bannack Stat.; re-en. Sec. 610, p. 159, Cod. Stat. 1871; re-en. Sec. 530, p. 179, L. 1877; re-en. Sec. 530, 1st Div. Rev. Stat. 1879; re-en. Sec. 547, 1st Div. Comp. Stat. 1887; amd. Sec. 180, C. Civ. Proc. 1895; amd. Ch. 3, 2nd Ex. L. 1903; re-en. Sec. 6315, Rev. C. 1907; amd. Sec. 1, Ch. 114, L. 1909; re-en. Sec. 8868, R. C. M. 1921; amd. Sec. 1, Ch. 93, L. 1927; amd. Sec. 1, Ch. 218, L. 1961; amd. Sec. 1, Ch. 82, L. 1963; amd. Sec. 1, Ch. 234, L. 1965. Cal. C. Civ. Proc. Sec. 170.

Amendment

The 1965 amendment deleted "by reason of the bias or prejudice of such judge" at the end of the first sentence of subdivision 4; divided subdivision 4 into two paragraphs; and made a minor change in punctuation.

Repealing Clause

Section 2 of Ch. 234, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3, of Ch. 234, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 8, 1965.

Constitutionality

The 1965 amendment of this section, deleting the words "by reason of the bias and prejudice of such judge," does not impair the constitutionality of this section, since the affidavit will still be required to state that the party has reason to believe and does believe he cannot have a fair and impartial hearing or trial before the district judge. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

This section does not violate the separation of powers provision of section 1, article IV of the Montana constitution in that it does not impinge upon the ex-

istence or supremacy of the judicial system nor alter its jurisdiction or duties, but is a reasonable manner of providing a fair trial for all litigants. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Compelling Disqualification

Where district court judge attempted to comply with affidavit of disqualification, but was unsuccessful in calling in a district court judge from another judicial district, and was also unsuccessful in attempting to comply with order to show cause, mandamus proceedings against him were dropped but not against a second district court judge who believed he had original jurisdiction and challenged the constitutionality of this section. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Mandamus

Mandamus is the appropriate remedy to compel a disqualified judge to perform a mandatory duty resting upon him to call in another judge or transfer the cause to another department or court. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

New Trial

This section should not be construed to permit disqualification of a judge pending motion for a new trial because of the provisions of Rule 59(d), M. R. Civ. P. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Remanded Cause

District judge should have honored affidavit of disqualification filed more than four months before day fixed for hearing where mandate of supreme court in remanding cause left it to the district court to make a determination as to the amount due the plaintiffs in the event that sum was not settled between the parties themselves. State ex rel. Gage v. District Court, — M —, 419 P 2d 746, 747.

References

State ex rel. Wilson v. District Court, 143 M 543, 393 P 2d 39; State ex rel. McNeal v. District Court, 144 M 550, 399 P 2d 997; State ex rel. Kinman v. District Court, 146 M 74, 404 P 2d 517.

CHAPTER 11—MISCELLANEOUS PROVISIONS RESPECTING COURTS AND JUDICIAL OFFICERS

Section 93-1107. Judges' retirement system—definitions.
93-1108. Montana judges' retirement system.
93-1109. Montana judges' retirement board.
93-1110. Administrative expenses.
93-1111. Payments into the Montana judges' retirement fund—investment.
93-1112. Rules and regulations—actuarial data.
93-1113. Membership.
93-1114. Service allowance.
93-1115. Payments by contributors.
93-1116. Contributions by the state of Montana.
93-1117. Vesting of proportional retirement.
93-1118. Retirement allowance.
93-1119. Disability retirement allowance.
93-1120. Involuntary retirement allowance.
93-1121. Penalty retirement allowance.
93-1122. Refunds in case of resignation or discharge.
93-1123. Payments upon death.
93-1124. Payments in case of death from natural cause.
93-1125. Monthly payments of retirement allowances.
93-1126. Exemption from taxes and execution.
93-1127. Nomination of beneficiary.
93-1128. Service in the armed forces of the United States.
93-1129. Fraud—correction of errors.
93-1130. Call of retired judge for duty.
93-1131. Optional retirement allowance.
93-1132. Transfer of dormant accounts to pension accumulation fund.

93-1101. (8877) Subsequent applications for orders refused, etc.

References

Weinheimer v. Scott, 143 M 243, 388 P 2d 790.

93-1102. (8878) Violations of preceding section.

Frivolous Appeal

Where attorney specified as error in his appellate brief in a second action, the same point raised in his complaint in a previous action involving the same parties, the appeal was frivolous and damages were assessed in favor of the respondents. Weinheimer v. Scott, 143 M 243, 388 P 2d 790.

93-1107. Judges' retirement system—definitions. The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

"Accumulated deductions"—the total of the amounts deducted from the salary of a contributor and paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

"Beneficiary"—shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

"Retired judge"—any person in receipt of a retirement allowance under this act.

"Board"—the Montana judges' retirement board.

"Penalty retirement age"—seventy (70) years of age.

"Contributor"—any person who has accumulated deductions in the fund standing to his credit.

"Final salary"—the annual current salary for the office retired from.

"Actuarial equivalent"—the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

"Fund"—the Montana judges' retirement fund.

"Involuntary retirement"—a retirement not for cause and before retirement age.

"Member's annuity"—payments for life derived from contributions made by the contributor.

"Retirement allowance"—the state annuity plus the member's annuity.

"State annuity"—payments for life derived from contributions made by the state of Montana.

History: En. Sec. 1, Ch. 289, L. 1967.

Title of Act

An act relating to the judicial department of the state of Montana; providing for the retirement of district judges and justices of the supreme court, subject to thereafter being called into service for the performance of certain judicial duties under the direction of the supreme court and providing an allowance of actual expenses for such service; defining the terms used in this act; establishing a Montana judges' retirement system; creating a Montana judges' retirement board; providing for payment of the expense of administering this act, and for payments into the Montana judges' retirement fund; providing for the establishment and enforcement of rules and regulations; requiring membership in public employees' retirement system and for payments thereto by each judge not heretofore a member thereof; providing a service allowance based on length of service; requiring payments into the Montana judges' retirement fund by deductions from members' salaries; providing for contributions by the state of Montana, and for payment into the Montana judges' retirement fund of one-quarter of fees collected by clerks of district court and by the clerk of the supreme court; specifying length of service and age requirements necessary for retirement; providing the method of computing retirement allowance; providing for a disability retirement allowance and an involuntary

retirement allowance; specifying penalty retirement age and providing for a retirement allowance forfeiture; providing for payments upon death; providing for monthly payments of retirement allowances, for exemption from taxes and execution, for nomination of beneficiary, and for options available to judges entering military service; providing certain optional methods of payment of retirement allowance; providing for transfer of accounts dormant for ten (10) years; and providing a savings clause declaring the provisions of this act to be severable.

93-1108. Montana judges' retirement system. A retirement system is hereby established for the judges of the district court and justices of the supreme court of the state of Montana.

History: En. Sec. 2, Ch. 289, L. 1967.

93-1109. Montana judges' retirement board. There is hereby created a Montana judges' retirement board, hereinafter referred to as the "board." The board shall consist of five (5) members who shall be the same persons as those who compose the board of administration of the public employees' retirement system.

History: En. Sec. 3, Ch. 289, L. 1967.

93-1110. Administrative expenses. The expense of the administration of this act, exclusive of the payment of retirement allowances and other benefits, shall be paid by the state of Montana, by appropriation out of the general fund, made on the basis of budgets submitted by the board.

History: En. Sec. 4, Ch. 289, L. 1967.

93-1111. Payments into the Montana judges' retirement fund—investment. All appropriations made by the state of Montana, all contributions by members of the Montana judges, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the secretary of the public employees' retirement system board (PERS), who shall credit said payments to the Montana judges' retirement fund. Said funds may be co-mingled with funds of the PERS, but shall be earmarked as judges' retirement fund.

History: En. Sec. 5, Ch. 289, L. 1967.

93-1112. Rules and regulations—actuarial data. The board may establish such rules and regulations as it deems necessary and is charged within the limitations of this act for its proper administration, operation, and enforcement, and shall be the authority under this act for its proper administration, operation, and enforcement, and shall be the authority under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the fund, and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 289, L. 1967.

93-1113. Membership. (a) Any judge or justice, who has, previous to the adoption of this act, been a member of the PERS, may elect to remain under that system; such election to be made in writing to the PERS board within three (3) months after the effective date of this act.

(b) Every judge or justice who was in service in either a district court or a supreme court of the state of Montana, prior to July 1, 1967, shall have the option and he may elect to make back payments to the date when he first entered the service of the judiciary. Such back payments may be spread over a period of five (5) years by having the regular payroll deduction of the contributor increased in an amount equal to the total of his back payments divided by sixty (60), which deduction increase shall be credited to such back payments owing, and shall be continued until the full amount of such back payments shall have been completed. Any such deduction increase may be anticipated in part or in full by the contributor at any time and must be anticipated in full at the time of retirement before a retirement allowance is granted, and if not so anticipated and paid in full then a member's retirement allowance shall be calculated for the total years and months on which contributions have been made in accordance with section 12 [93-1118] of this act. Every contributor who shall elect to make such back payments shall receive full credit under this act for all contributions made into the fund and for all service credits to which he might thereby be entitled.

History: En. Sec. 7, Ch. 289, L. 1967.

93-1114. Service allowance. In computing the length of service of a contributor for retirement purposes, full credit shall be given to each contributor for each year of service rendered to the judiciary including service rendered prior to July 1, 1967, upon complying with the provisions of this act. As soon as practicable, the retirement board shall issue to each original member a certificate certifying the aggregate length of his service prior to July 1, 1967. Such certificate shall be final and conclusive as to his prior service unless thereafter modified by the board upon application of the contributor.

History: En. Sec. 8, Ch. 289, L. 1967.

93-1115. Payments by contributors. Every member shall be required to contribute into the fund a sum equal to six per cent (6%) of his monthly salary, which sum shall be deducted from his salary and credited to his account in the fund.

History: En. Sec. 9, Ch. 289, L. 1967.

93-1116. Contributions by the state of Montana. The state of Montana shall monthly contribute to the fund a sum equal to six per cent (6%) of the salary of each member of the Montana judiciary retirement system. In addition to the above, three-quarters (¾) of the fees collected under section 25-232, as amended, and section 25-233, as amended, shall be paid into the county treasurer on the first Monday of each month as provided in section 25-203, and the other one-quarter shall be transmitted by

the clerk to the secretary of the PERS board on the first Monday of each month, and by him credited to the judicial retirement fund. The fees collected under section 82-503, as amended, shall be by the clerk of the supreme court paid by him, three-quarters (¾) into the state treasury to be credited to the general fund, and one-quarter (¼) of which shall be paid by him to the secretary of the PERS board, which shall be credited to the credit of the judicial retirement fund. The full amount of such fund as created and accumulated is hereby set aside to be used exclusively for the purpose of paying the accrued retirement and expenses provided for herein.

History: En. Sec. 10, Ch. 289, L. 1967.

93-1117. Vesting of proportional retirement. Any member who has completed at least five (5) years or more service, and has reached the age of sixty-five (65), may retire and receive the proportional retirement allowances provided in section 12 [93-1118].

History: En. Sec. 11, Ch. 289, L. 1967.

93-1118. Retirement allowance. Upon retirement from service a member shall receive a service retirement allowance which shall consist of the state annuity plus the member's annuity. The member's annuity shall be the actuarial equivalent of his aggregate contributions at the time of retirement and the state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of three and one-third per cent (3⅓%) per year of his final salary for the first fifteen (15) years' service, and one per cent (1%) per year for each year's service thereafter.

History: En. Sec. 12, Ch. 289, L. 1967.

93-1119. Disability retirement allowance. In case of the total disability of a contributor, permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement; provided, that if such total disability is a direct result of any service to the Montana judiciary in line of duty, then such judge or justice who is totally and permanently disabled shall be retired on total retirement allowance of a minimum of one-half (½) of his final salary or the allowance provided in section 12 [93-1118], whichever is greater. In the event of any disability not caused in the line of duty after attaining the age of sixty (60) years, the maximum monthly payment shall be the retirement allowance as provided in section 12 [93-1118].

History: En. Sec. 13, Ch. 289, L. 1967.

93-1120. Involuntary retirement allowance. Should a contributor be discontinued from service, not voluntarily, after having completed five (5) years of total service, but before reaching retirement age, he shall, upon filing of application in the manner herein provided for retirement, be paid as he may elect as follows:

(a) the full amount of accumulated deductions standing to his credit; or

(b) a member's annuity of equivalent actuarial value to his accumulated deductions standing to his credit, plus the actuarial equivalent of a state annuity having a value equal to the present value of a state annuity then standing to his credit.

History: En. Sec. 14, Ch. 289, L. 1967.

93-1121. Penalty retirement allowance. Any judge or justice who becomes eligible for retirement hereunder, but fails to make application therefor, prior to his attaining the age of seventy (70) years, shall automatically waive all retirement benefits, and shall receive a return of only such moneys equal to the accumulated deduction contributed by him; save and except that any judge or justice, who is over the age of seventy (70) years, at the time of the effective date of this act, or who shall attain such age before the expiration of his term, shall be permitted to serve out the balance of his existing term, without forfeiting said retirement. At the termination of the said existing term, if such member has failed to make application for retirement under this act, he shall automatically waive all retirement benefits hereunder, and shall receive a return of only such moneys equal to the accumulated deduction contributed by him.

History: En. Sec. 15, Ch. 289, L. 1967.

93-1122. Refunds in case of resignation or discharge. Where a contributor resigns of his own volition, or is discharged for cause before becoming entitled to a retirement allowance, then the deductions standing to his credit shall be paid to him.

History: En. Sec. 16, Ch. 289, L. 1967.

93-1123. Payments upon death. If the board shall find that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary. Such retirement allowance shall consist of:

(a) a member's annuity which shall be the actuarial equivalent of the contributor's accumulated deductions standing to his credit; and

(b) the actuarial equivalent of a state annuity which when added to the member's annuity will provide a total annuity equal to the allowance provided for in section 12 [93-1118].

History: En. Sec. 17, Ch. 289, L. 1967.

93-1124. Payments in case of death from natural cause. (a) If the retired judge or justice dies before receiving in payments the present value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary.

(b) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in section 14 [93-1120].

History: En. Sec. 18, Ch. 289, L. 1967.

93-1125. Monthly payments of retirement allowances. The retirement allowances granted under the provisions of this act shall be paid in equal monthly installments and shall not be increased, decreased, revoked or repealed unless by act of the legislative assembly of the state of Montana. No retirement allowances can be approved by the board while the member is drawing full compensation as a judge or justice.

History: En. Sec. 19, Ch. 289, L. 1967.

93-1126. Exemption from taxes and execution. Any money received or to be paid as a member's annuity, state annuity or return of deductions or the right to any of these, shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment or any other process whatsoever and shall be unassignable.

History: En. Sec. 20, Ch. 289, L. 1967.

93-1127. Nomination of beneficiary. Every contributor shall have the authority to name his beneficiary by written designation duly acknowledged and filed with the board.

History: En. Sec. 21, Ch. 289, L. 1967.

93-1128. Service in the armed forces of the United States. Any member of the Montana judiciary now in or hereafter inducted into the armed forces of the United States, shall have the option:

(a) to continue his payments into the fund; or

(b) allow the board to make his payments for him during such military service, in which event he shall repay the fund the full amount of such payments upon his return to the Montana judiciary, and such repayments must be made within two (2) years after his return to the judiciary provided that a member's service in the armed forces of the United States shall be credited to and made a part of the member's service allowance.

History: En. Sec. 22, Ch. 289, L. 1967.

93-1129. Fraud—correction of errors. (a) No person shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of the retirement system herein established in any attempt to defraud such system.

(b) Should any such change in records fraudulently made or any mistake in records inadvertently made result in any contributor or beneficiary receiving more or less than he would have been entitled to had the records been correct, then, on the discovery of such error, the board shall correct such error and shall adjust the payments which shall be made to the contributor or annuitant in such manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

Any person violating any of the provisions of subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars ($1,000) or suffer imprisonment not exceeding one (1) year, or both, in the discretion of the court.

History: En. Sec. 23, Ch. 289, L. 1967.

93-1130. Call of retired judge for duty. Every judge or justice receiving retirement pay under the provisions of this act, shall, if physically and mentally able, be subject to call by the supreme court or the chief justice thereof to aid and assist the supreme court or any district court under such directions as the supreme court may give, including the examination of the facts and cases before the court, the examination of authorities cited and the preparation of opinions for and on behalf of the court, which opinions, when and if and to the extent approved by the court, may by the court be ordered to constitute the opinion of such court and such court and such retired judge or justice may, subject to any rule which the supreme court may adopt, perform any and all duties preliminary to the final disposition of cases in so far as not inconsistent with the constitution of the state. Such retired judge or justice when called to service as herein provided shall be reimbursed for his actual expenses, if any, in responding to such call.

History: En. Sec. 24, Ch. 289, L. 1967.

93-1131. Optional retirement allowance. Until the first payment on account of any retirement allowance is made and subject to the conditions that, if he die after retirement and within thirty (30) days from the date upon which his election or changed election is received at the office of the retirement board, then said election is void and of no effect, and the death shall be considered as that of a member before retirement. A member or a beneficiary may elect, or revoke or change a previous election prior to the approval of the previous election to receive the actuarial equivalent of his retirement allowance as of the date of retirement, in a lesser retirement, allowance, payable throughout life with one of the following options:

Option 1. Upon his death, his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option 2. Upon his death, one-half (½) of his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option 3. Such other benefit or benefits shall be paid, either to the beneficiary or to such other person or persons as he nominates, as, together with such lesser retirement allowance, are the actuarial equivalent of his retirement allowance, and shall be approved by the board.

History: En. Sec. 25, Ch. 289, L. 1967.

93-1132. Transfer of dormant accounts to pension accumulation fund. The board may in its discretion transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of ten (10) years, provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

History: En. Sec. 27, Ch. 289, L. 1967.

Separability Clause

Section 26 of Ch. 289, Laws 1967 read "The provisions of this act are severable, and, if any of its provisions shall be held to be unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional provisions not been included herein."

CHAPTER 12—JURIES—DIFFERENT KINDS DEFINED

93-1206. (8888) **Juries in justices' courts.**

Cross-References

Formation of criminal trial jury in justice or police court, sec. 95-2005.

Trial of criminal cases in justice and police courts, sec. 95-2004.

CHAPTER 13—JURORS—QUALIFICATIONS AND EXEMPTIONS

Section 93-1301. Who competent to act as juror.

93-1301. (8890) **Who competent to act as juror.** A person is competent to act as a juror if:

1. A citizen of the United States of the age of twenty-one years, who shall have been a resident of the state one year, and of the county ninety days before being selected and returned.

2 to 4. * * * [Same as parent volume.]

History: Earlier statutes were Sec. 8, p. 506, Cod. Stat. 1871; amd. Sec. 1, p. 70, L. 1873; re-en. Sec. 780, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 57, L. 1881; re-en. Sec. 1304, 5th Div. Comp. Stat. 1887; re-en. Sec. 230, C. Civ. Proc. 1895; re-en. Sec. 6337, Rev. C. 1907; re-en. Sec. 8890, R. C. M. 1921; amd. Sec. 6, Ch. 203, L. 1939; amd. Sec. 1, Ch. 116, L. 1965. Cal. C. Civ. Proc. Sec. 198.

Amendment

The 1965 amendment deleted "and not more than seventy" after "age of twenty-one" in paragraph 1.

Repealing Clause

Section 2 of Ch. 116, Laws 1965 repealed all acts and parts of acts in conflict therewith.

CHAPTER 19—COURT REPORTERS

Section 93-1906. Salary and expenses of reporter—apportionment.

93-1906. (8933) **Salary and expenses of reporter — apportionment.** Every reporter appointed under the provisions of this chapter receives an annual salary of eight thousand eight hundred dollars ($8,800) and no other compensation except as provided in section 93-1904, provided, however, that all transcripts and bills of exceptions required by the county shall be furnished without cost, payable in monthly installments out of the general funds of the counties comprising the district for which he is appointed, according and in proportion to the number of civil and criminal actions entered and commenced in the district courts of such counties respectively in the preceding year; and it shall be the duty of the judge of such district, on the first day of January of each year, or as soon thereafter as may be, to apportion the amount of such salary to be paid by each county in his district on the basis aforesaid. The reporter is allowed, in addition to the salary and fees above provided, in judicial

districts comprising more than one (1) county, his actual and necessary expenses of transportation and living when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto, said expenses to be apportioned and payable in the same way as the salary.

History: En. Sec. 375, C. Civ. Proc. 1895; re-en. Sec. 6378, Rev. C. 1907; amd. Sec. 1, Ch. 80, L. 1909; re-en. Sec. 8933, R. C. M. 1921; amd. Sec. 1, Ch. 36, L. 1927; amd. Sec. 1, Ch. 73, L. 1945; amd. Sec. 1, Ch. 49, L. 1951; amd. Sec. 1, Ch. 125, L. 1953; amd. Sec. 1, Ch. 76, L. 1955; amd. Sec. 6, Ch. 22, L. 1961; amd. Sec. 1, Ch. 114, L. 1965; amd. Sec. 1, Ch. 221, L. 1967. Cal. C. Civ. Proc. Secs. 271 and 274.

Amendments

The 1965 amendment increased the salary set forth near the beginning of the section from $6,600 to $7,800.

The 1967 amendment increased the annual salaries of court reporters from $7,800 to $8,800.

CHAPTER 20—ATTORNEYS—QUALIFICATIONS—ADMISSION—LICENSE AND DISBARMENT

93-2026. (8961) Disbarment of attorneys—causes—jurisdiction.

Misappropriation

The conduct of an attorney in opening a checking account in the name of an estate of which he had been appointed executor and making withdrawals for his personal use constituted deceit and malpractice involving moral turpitude. In re O'Donnell, 143 M 51, 387 P 2d 303.

CHAPTER 21—ATTORNEYS—DUTIES—LIABILITIES AND COMPENSATION

93-2106. (8979) Punishment for willful delay.

Actual Damages

Under this section, only actual damages may be trebled, not the statutory interest due. Daniels v. Paddock, 145 M 207, 399 P 2d 740.

Fiduciary Duty

Where attorney paid off client's mortgage with stipulation to receive client's inheritance when it came due, failure to give money to client under transaction, which was a breach of attorney's fiduciary duty, subjected attorney to treble damages. Daniels v. Paddock, 145 M 207, 399 P 2d 740.

93-2120. (8993) Lien for compensation.

Unemployment Compensation Cases

This section being in conflict with sections 87-142 and 87-143, relating to unemployment compensation claims, the latter sections, being more specific, should control over this section, which is more general, especially where, in light of the services rendered, the attorney's fees could be considered "necessaries" under section 87-143. McAlear v. Unemployment Compensation Commission, 145 M 458, 405 P 2d 219.

CHAPTER 25—LIMITATION OF ACTIONS FOR RECOVERY OF REAL PROPERTY

93-2507. (9018) Possession—when presumed, etc.

Public Highway

Where county adversely paved and maintained a highway over the land of a private party for a period of more than ten years, such county acquired an easement by prescription over the land even though the private owner was assessed for and paid taxes on the property during the running of the statutory period. Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

93-2508. (9019) Occupation under written instrument or judgment, etc.

References

Rhodes v. Weigand, 145 M 542, 402 P 2d 588.

93-2513. (9024) Occupancy and payment of taxes necessary, etc.

Burden of Proof

The burden of proving all the essential elements of adverse possession is upon the party alleging it and he must prove that no taxes were levied or assessed against the land or that he has paid all taxes which were levied thereon. Townsend v. Koukol, — M —, 416 P 2d 532, 536.

Easement

Where the county maintained and paved a highway over the land of a private party for a period of more than ten years, such county acquired an easement by prescription over the land and it was not necessary that the county pay taxes on the property during the statutory period. Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

Essential Elements

To constitute adverse possession, the possession must be actual, feasible, exclusive, hostile and continuous for the full period of years and the party asserting adverse possession must have paid all the taxes levied and assessed upon the property during the statutory period. Townsend v. Koukol, — M —, 416 P 2d 532, 535, 536.

References

Rhodes v. Weigand, 145 M 542, 402 P 2d 588.

CHAPTER 26—LIMITATION OF OTHER ACTIONS

93-2603. (9029) Within eight years.

Nonparticipating Oil Royalty

Where wife agreed to property settlement granting her a percentage of royalties should oil ever be found on land, such right did not vest until oil production began and her action for royalties was not barred by the fact that it had been more than eight years since execution of the settlement. Close v. Ruegsegger's Estate, 143 M 32, 386 P 2d 739.

93-2604. (9030) Within five years.

Damage to Building from Broken Water Pipes

This section did not apply to action by owners of apartment building against realtors for water damages to building from bursting of water pipes due to alleged negligence of realtors in caring for the building. The claim was barred by statute of limitations relating to injury to or waste or trespass on property, section 93-2607. Quitmeyer v. Theroux, 144 M 302, 395 P 2d 965, 969, 970. (Dissenting opinion, 144 M 302, 395 P 2d 965, 971.)

References

Hager v. Tandy, 146 M 531, 410 P 2d 447.

93-2605. (9031) Within three years.

Malpractice

Where sponge had been left in patient's body in operation performed ten years previously, patient's cause of action for malpractice did not accrue until patient learned that such foreign object was in his body. Johnson v. St. Patrick's Hospital, — M —, 417 P 2d 469, 473.

References

Rhodes v. Weigand, 145 M 542, 402 P 2d 588.

93-2607. (9033) Two-year limitation.

Claim and Delivery

In an action for claim and delivery, where possession by the defendant is rightful, the statute of limitations begins to run when the defendant refuses upon demand to return the property. Interstate Mfg. Co. v. Interstate Products Co., 146 M 449, 408 P 2d 478.

Damage by Fire

Two-year statute of limitations under this section barred suit brought by the United States under section 82-1237 for damage to property caused by alleged negligence of defendants in setting forest fire. United States v. Eytcheson, 237 F Supp 371.

Damage to Building from Broken Water Pipes

Claim of owners of an apartment building against realtors for water damage to building from bursting of water pipes due to alleged negligence of realtors in caring for the building was barred by this section. Statute of limitations concerning implied contracts, section 93-2604, was inapplicable. Quitmeyer v. Theroux, 144 M 302, 395 P 2d 965, 969, 970. (Dissenting opinion, 144 M 302, 395 P 2d 965, 971.)

Fraud and Mistake

An action by administrator of estate of deceased against surviving partners to recover assets which had been transferred by deceased during his last illness was timely filed on July 25, 1960 where fraud was not discovered until December 1, 1958. Marshall v. Minlschmidt, — M —, 419 P 2d 486, 491.

Injury to Personal Property

An action by an adoptive father and natural grandfather under section 93-2809 is an action for an injury to a pecuniary interest of the parent, therefore one for an injury to a property right which must be commenced within two years from the date the claim arose under subdivision 2 of this section. LaTray v. Mannix Electric Co., — M —, 419 P 2d 744, 745.

Statutory Liability

The cause of action based on a railroad's statutory duty to maintain a cement drop, siphon and wooden flume on its right of way did not accrue on the taking of the right of way nor on the abandonment of the right of way and notice to water rights owners that it would no longer maintain the works, but rather would accrue only after injury occurred from the railroad's failure to maintain the works. Harrer v. Northern Pacific Ry. Co., — M —, 410 P 2d 713.

References

Rhodes v. Weigand, 145 M 542, 402 P 2d 588; Hager v. Tandy, 146 M 531, 410 P 2d 447.

93-2613. (9041) Actions for relief not hereinbefore provided for.

References

Rhodes v. Weigand, 145 M 542, 402 P 2d 588.

CHAPTER 28—PARTIES TO CIVIL ACTIONS

93-2809. (9075) Parent or guardian may sue for injury, etc.

Limitation of Actions

An action by an adoptive father and natural grandfather under this section is an action for an injury to a pecuniary interest of the parent, therefore one for an injury to a property right which must be commenced within two years from the date the claim arose under section 93-2607(2). LaTray v. Mannix Electric Co., — M —, 419 P 2d 744, 745.

Mother Bringing Action

Decedent's mother was real party in interest in wrongful death action where decedent left no surviving wife nor children and his father was dead. Cowan v. Pacific Gamble Robinson Co., 232 F Supp 403, 405.

93-2810. (9067) When representative may sue for death, etc.

References

Stiles v. Gove, 345 F 2d 991, 992.

93-2823. (9085) Tenants in common, etc., may sever in bringing, etc.

Assignor Bringing Action

Assignee of one-half interest of an overriding royalty agreement with plaintiff-assignor and defendant could not be joined as a party plaintiff in a suit to compel defendant to pay the other half interest to plaintiff whether assignor was a trustee for the assignee or they were tenants in common. Lowe & Lynn v. Flank Oil Co., 144 M 499, 398 P 2d 608.

93-2824. (9086) Action—when not to abate by death, marriage, etc.

Wrongful Death Action

Decedent's mother was real party in interest in wrongful death action where decedent left no surviving wife nor children and his father was dead. Cowan v. Pacific Gamble Robinson Co., 232 F Supp 403, 405.

CHAPTER 29—PLACE OF TRIAL OF CIVIL ACTIONS

93-2901. (9093) Certain actions to be tried where the subject, etc.

References

Beavers v. Rankin, 142 M 570, 385 P 2d 640; Tassie v. Continental Oil Co., 228 F Supp 807, 808; Hidden Hollow Ranch v. Collins, 146 M 321, 406 P 2d 365.

93-2902. (9094) Other actions—where the cause, etc.

References

Hidden Hollow Ranch v. Collins, 146 M 321, 406 P 2d 365.

93-2903. (9595) Place of trial of actions against counties.

Action by County against Nonresident

This section does not require a change of venue where a county brings action against a nonresident in the district court of that county. Carter County v. Cambrian Corp., 143 M 193, 387 P 2d 904.

References

Tassie v. Continental Oil Co., 228 F Supp 807, 808.

93-2904. (9096) Other actions, according to the residence, etc.

Burden of Proof

In contract action, once defendant showed that his place of residence was other than where suit was brought, the burden of proof was on the plaintiff to meet the motion for change of venue. Rapp v. Graham, 145 M 371, 401 P 2d 579.

Change of Venue

Although express terms of construction loan agreement between borrowers residing in Lewis and Clark County and lender in Cascade County did not designate place of performance of the contract, district court of Lewis and Clark County properly denied motion of lender for change of venue of action for breach of the contract, where borrowers' affidavit in opposition to the motion showed that the contract was to be performed in Lewis and Clark County, the loan agreement, note and mortgage being executed in Lewis and Clark County for home to be built in that county and inspection, supervision and completion of the home were to take place in Lewis and Clark County where all bills were to be paid. Brown v. First Federal Savings & Loan Assn. of Great Falls, 144 M 149, 394 P 2d 1017, 1019.

Denial of defendant's motion for change of venue to place where he resided was improper, since, where plaintiff-relator did not plead the commission agreement itself, nor include it as an exhibit, there was no way of considering the venue matter except on the residence of the defendant. Rapp v. Graham, 145 M 371, 401 P 2d 579.

The provisions of this section are permissive only and where five separate actions were brought in four widely separated counties against the same defendant involving the same accident, court did not abuse its discretion in granting change of venue under section 93-2906, subdivision 3, to the place where the tort occurred, for the convenience of the witnesses. Putro v. Mannix Electric, Inc., — M —, 412 P 2d 410.

Construction

Statutory provisions creating exceptions to the general rule recognizing a defendant's privilege to be sued in his own county will not be given a strained or doubtful construction. Rapp v. Graham, 145 M 371, 401 P 2d 579.

Performance of Contract

In an action for breach of an oral agreement to lease farm land, venue was in the county where the estate of one of the defendants was being probated, in which the other defendants resided, in which the land was located, and in which service was made and the creditor's claim filed. Erickson v. Toy, 142 M 121, 385 P 2d 268.

If contract is to be performed in a county other than the county of defendant's residence, then the plaintiff has his choice of the two counties in which to sue. He may sue in the county where defendant resides or in the county where the contract is to be performed. The provisions of this section are permissive. Brown v. First Federal Savings & Loan Assn. of Great Falls, 144 M 149, 394 P 2d 1017, 1019.

In order for plaintiff to maintain action on contract in a county where defendant does not reside, the place of performance must be evident either by express terms of contract, or by necessary implication that a county other than that of defendant's residence is intended to be the county of performance. Brown v. First Federal Savings & Loan Assn. of Great Falls, 144 M 149, 394 P 2d 1017, 1019.

To maintain suit in county other than that of defendant's residence, plaintiff must show clearly the facts relied on to bring the case within one of the exceptions to the rule. The contract must state clearly that it is to be performed in county other than that of defendant's residence so that no other fair construction can be placed upon it. Rapp v. Graham, 145 M 371, 401 P 2d 579.

In bringing suit where contract is to be performed, rather than place of defendant's residence, a mere direction by the seller as to the place of payment is not sufficient to maintain venue within exception to this section, nor can a promise to remit to cover the purchase price be sued upon by the seller in the county of the point to which the remittance is to be made. Rapp v. Graham, 145 M 371, 401 P 2d 579.

Tort Actions

Attorney's advice to a client that a personal injury action had to be filed in the county where the cause arose was not improper or unethical. Petition of Wasson, 143 M 323, 389 P 2d 406.

Although either the county of residence of defendant or county where tort was committed was proper county in which to bring action for personal injury arising from accident, where none of the defendants were residents of Montana, the action was triable in any county designated by plaintiff in his complaint. Tassie v. Continental Oil Co., 228 F Supp 807, 809.

Defendant is not entitled to a change of venue in personal injury action where plaintiff filed the action in the proper county. Tassie v. Continental Oil Co., 228 F Supp 807, 809.

Where personal injury action arising from accident occurring in Fallon County, Montana, was commenced in Silver Bow County, Montana, by nonresident plaintiff, and nonresident defendants in removing action to federal district court designated Billings Division, but stated no statutory grounds for change of venue and did not show good cause for assignment to Billings Division, plaintiff was entitled to change of venue to Butte Division in which Silver Bow County was located. Tassie v. Continental Oil Co., 228 F Supp 807, 810.

References

Hidden Hollow Ranch v. Collins, 146 M 321, 406 P 2d 365; Yeager v. Foster, 146 M 330, 406 P 2d 370.

93-2906. (9098) Place of trial may be changed in certain cases.

Convenience of Witnesses

Where affidavit showed that five separate actions had been brought against defendant in four widely separated counties involving the same occurrence, trial court properly granted change of venue for the convenience of the witnesses to the county where accident occurred although affidavit omitted names of witnesses and nature of their testimony. Putro v. Mannix Electric, Inc., — M —, 412 P 2d 410.

County Taxpayers as Jurors

Where county brought an action for damages done to bridge struck by defendant's truck, it was not an abuse of discretion for the district court to deny a motion for a change of venue even though the jury was made up, necessarily, of taxpayers of that county, each of whom had a pecuniary interest of $31. Carter County v. Cambrian Corp., 143 M 193, 387 P 2d 904.

Multiple Causes of Action

Where the defendant is entitled to a change of venue on one cause of action in a complaint containing more than one cause of action, the motion for change must be granted even though the other cause or causes would be triable where the plaintiff commenced the action. Beavers v. Rankin, 142 M 570, 385 P 2d 640.

Time for Motion

Court's discretion in granting change of venue under subdivision 3 of this section cannot be exercised until after a defendant has answered, so that where action was brought under section 93-2904 in county where co-defendant lived, denial of first motion before defendant had answered applied only to the residency re-

quirement of the co-defendant and did not bar determination of second motion made under this section after defendant had answered. Putro v. Mannix Electric, Inc., — M —, 412 P 2d 410.

References

Tassie v. Continental Oil Co., 228 F Supp 807, 810; State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648; Yeager v. Foster, 146 M 330, 406 P 2d 370.

CHAPTER 30—MANNER OF COMMENCING CIVIL ACTIONS—SERVICE OF SUMMONS

93-3002. (9106) Superseded—Supreme Court Order 10750.

Supersession

This section (Sec. 23, p. 47, Bannack Stat.; Sec. 23, p. 139, L. 1867; Sec. 67, p. 54, L. 1877), relating to endorsement of the complaint and issue of summons, is superseded by M. R. Civ. P., Rule 41(e) as amended by Sup. Ct. Ord. 10750.

93-3008. (9112) Superseded—Supreme Court Order 10750.

Supersession

This section (Sec. 1, Ch. 37, L. 1917; Sec. 1, Ch. 135, L. 1949; Sec. 1, Ch. 122, L. 1951), relating to service of process on corporations through the secretary of state, is superseded by M. R. Civ. P., Rule 4 D, as amended by Sup. Ct. Ord. 10750.

93-3011, 93-3012. (9115, 9116) Superseded—Supreme Court Order 10750.

Supersession

These sections (Secs. 4, 5, Ch. 37, L. 1917), relating to service of process on corporations through the secretary of state, are superseded by M. R. Civ. P., Rule 4 D, as amended by Sup. Ct. Ord. 10750.

93-3020. (9124) Return of summons.

References

Sewell v. Beatrice Foods Co., 145 M 337, 400 P 2d 892.

CHAPTER 37—VERIFICATION OF PLEADINGS

93-3702. (9163) Verification of pleadings.

References

Rambur v. Diehl Lumber Co., 144 M 84, 394 P 2d 745, 747.

CHAPTER 42—INJUNCTION

93-4203. (9242) Injuncton—when not allowed.

Discretionary Appointment

Taxpayer was not entitled to an injunction in action questioning the qualifications of supervisor appointed by board of railway commissioners in the proper exercise of their discretion. Steel v. Board of Railroad Commrs., 144 M 432, 397 P 2d 101.

Enforcement of Public Statute

County commissioners and assessor cannot be enjoined from relying on reclassification officer's real property evaluations to determine tax assessment rolls. State ex rel. Keast v. Krieg, 145 M 521, 402 P 2d 405.

93-4206. (9245) When notice required.

References

State ex rel. Keast v. Krieg, 145 M 521, 402 P 2d 405.

CHAPTER 43—ATTACHMENT

Section 93-4304. Undertaking.
93-4331.1. Release of attachment by clerk where no proceedings taken in main action.

93-4304. (9259) **Undertaking.** Before issuing the writ, the clerk must require a written undertaking on the part of the plaintiff, with two (2) or more sufficient sureties, to be approved by the clerk, in a sum not less than double the amount claimed by the plaintiff, if such amount be one thousand dollars ($1,000) or under, or, in case the amount so claimed by plaintiff shall exceed one thousand dollars ($1,000), then in a sum equal to such amount, but in no case shall an undertaking be required exceeding in amount the sum of twenty thousand dollars ($20,000). The condition of such undertaking shall be to the effect that if the defendant recovered judgment, or if the court shall finally decide that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages he may sustain by reason of the issuing out of the attachment, not exceeding the sum specified in the undertaking. At any time within thirty (30) days after the service of summons, the defendant may except to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two (2) days nor more than ten (10) days, must justify before a judge of the district court, or before the clerk thereof, and upon failure to justify, or if others in their place fail to justify, at the time and place appointed, the clerk or judge shall issue an order vacating the writ of attachment.

History: Ap. p. Sec. 93, p. 61, Bannack Stat.; amd. Sec. 122, p. 156, L. 1867; amd. Sec. 12, p. 65, L. 1869; amd. Sec. 7, p. 75, L. 1870; amd. Sec. 138, p. 54, Cod. Stat. 1871; amd. Sec. 20, p. 56, L. 1874; amd. Sec. 180, p. 82, L. 1877; re-en. Sec. 180, 1st Div. Rev. Stat. 1879; amd. Sec. 6, p. 9, L. 1881; re-en. Sec. 182, 1st Div. Comp. Stat. 1887; en. Sec. 892, C. Civ. Proc. 1895; re-en. Sec. 6659, Rev. C. 1907; re-en. Sec. 9259, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1951; amd. Sec. 1, Ch. 303, L. 1967. Cal. C. Civ. Proc. Sec. 539.

Amendments

The 1967 amendment increased the maximum amount of an undertaking from $10,000 to $20,000.

93-4314. (9267) **Garnishment—when garnishee liable to plaintiff.**

References

Great Falls Transfer & Storage Co. v. Pan American Petroleum Corp., 353 F 2d 348.

93-4331.1. Release of attachment by clerk where no proceedings taken in main action. If a writ of attachment has been levied on real property as provided in section 93-4307, R. C. M. 1947, and no proceedings have been taken in the action in which the attachment was issued for a period of five years, the clerk of court shall upon application of the defendant or the record owner of such real property issue a release of the attachment and a copy of such release shall be filed with the county clerk where the writ of attachment and notice thereof is filed and the county clerk shall file and index such release as any other releases of attachment.

History: En. Sec. 1, Ch. 97, L. 1965.

Title of Act

An act providing that a lien of attachment on real property may be released by the clerk of court where no action has been taken to foreclose such lien for a period of five years.

93-4335. (9288) Different attachments—when liens accrue.

Conflicting Attachments

Since, for purposes of garnishment, a debt has no fixed situs but may be reached in any jurisdiction where the person found owing it can be located, Wyoming court was bound to give full faith and credit to Montana court in determining which garnishor had prior claim where writs of attachment had been issued by different parties on the same garnishee in both states. Great Falls Transfer & Storage Co. v. Pan American Petroleum Corp., 353 F 2d 348.

93-4342. (9295) Repealed.

Repeal

This section (Sec. 9295, R. C. M. 1921), relating to attachment of stocks of foreign corporations, was repealed by Sec. 143, Ch. 300, Laws 1967.

CHAPTER 44—RECEIVERS

Section 93-4401. Appointment of receiver.

93-4401. (9301) Appointment of receiver. A receiver may be appointed by the court in which an action is pending, or by the judge thereof:

1. to 4. * * * [Same as parent volume.]

5. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

History: Ap. p. Sec. 116, p. 67, Bannack Stat.; re-en. Sec. 143, p. 160, L. 1867; re-en. Sec. 179, p. 62, Cod. Stat. 1871; en. Sec. 221, p. 93, L. 1877; re-en. Sec. 221, 1st Div. Rev. Stat. 1879; re-en. Sec. 229, 1st Div. Comp. Stat. 1887; re-en. Sec. 950, C. Civ. Proc. 1895; re-en. Sec. 6698, Rev. C. 1907; re-en. Sec. 9301, R. C. M. 1921; amd. Sec. 142, Ch. 300, L. 1967. Cal. C. Civ. Proc. Sec. 564.

Amendments

The 1967 amendment deleted subdivision 5 and redesignated former subdivision 6 as subdivision 5.

Debt as Basis for Appointment

Where bank held stock as security on loans made by farming corporation, but it appeared that stockholders were, in good faith, planning to meet their obligation and the corporation was solvent, appointment of receiver at instance of bank merely to protect the price of the stock was erroneous. State ex rel. Larry C. Iverson, Inc. v. District Court, 146 M 362, 406 P 2d 828.

Extraordinary Remedy

Appointment of a receiver being a "drastic" remedy, which deprives the lawful owner of property the right to manage and control his own interests, the power to appoint a receiver should be exercised sparingly only upon a strong showing, and not as of course. If the desired outcome may be achieved in any other way, then this course should be followed. State ex rel. Larry C. Iverson, Inc. v. District Court, 146 M 362, 406 P 2d 828.

References

Thisted v. Tower Management Corp., — M —, 409 P 2d 813.

93-4406. (9306) Powers of receivers.

References

Thisted v. Tower Management Corp., — M —, 409 P 2d 813.

CHAPTER 50—TRIAL BY JURY—FORMATION OF JURY—CHALLENGES

93-5011. (9344) Challenges for cause.

Taxpayers of Plaintiff County

Where county brought an action for damages to bridge, it was not an abuse of discretion for the district court to deny a motion for a change of venue even though the jury was necessarily made up of taxpayers of that county each of whom had a pecuniary interest averaging $31. Carter County v. Cambrian Corp., 143 M 193, 387 P 2d 904.

CHAPTER 51—TRIAL—CONDUCT OF THE TRIAL

93-5101. (9349) Order of trial.

References

Boehler v. Sanders, 146 M 158, 404 P 2d 885.

93-5102. (9350) View by jury of the premises.

Discretion of Trial Court

A viewing is within the discretion of the trial court, even where there has been a change in the condition of the scene of the accident or the thing which contributed to the accident. Clark v. Worrall, 146 M 374, 406 P 2d 822.

Time of Viewing

Where alterations to defendant's bowling alley had little relationship to the cause of the accident, it was not an abuse of discretion to allow the jury to view the premises on which the accident occurred after the alterations had been made. Clark v. Worrall, 146 M 374, 406 P 2d 822.

References

Wolfe v. Northern Pacific R. Co., — M —, 409 P 2d 528.

93-5105. (9353) Deliberation of jury—how conducted.

Misconduct of Jury

When the jury retires to the jury room it should be concerned only with the evidence and the law; the verdict, thus, is a result of a fair expression of opinion by all the jurors. Schmoyer v. Bourdeau, — M —, 420 P 2d 316, 317.

Trial court did not err in denying plaintiff's motion for a new trial, on the ground of misconduct of jury during its deliberations, supported by affidavits of four jurors indicating that the irregularity was not on a material matter in dispute, where plaintiff was probably not prejudiced by juror's misconduct in improperly referring to prior litigation in which plaintiff had been involved, the poll of the jury showing an eight to four verdict for the plaintiff. Schmoyer v. Bourdeau, — M —, 420 P 2d 316, 317.

93-5106. (9354) May come into court for further instructions.

Construction

Although this section provides that the jury may request that they be brought into court, this is not mandatory and the jury may send an inquiry out to the court. State ex rel. State Highway Commission v. Wheeler, — M —, 419 P 2d 492, 498.

CHAPTER 52—THE VERDICT—GENERAL AND SPECIAL—DIRECTED WHEN

93-5205. (9364) Directed verdict—when.

Inferences from Evidence

In passing on a motion for a directed verdict the court will consider the evidence in the light most favorable to the party against whom the motion is directed and will draw every reasonable inference from such evidence. Parini v. Lanch, — M —, 418 P 2d 861, 863.

Insufficient Evidence

A directed verdict may be granted when the evidence is so insufficient in

fact as to be insufficient in law. Parini v. Lanch, — M —, 418 P 2d 861, 863.

Negligence

Directed verdict on liability of defendant for injuries sustained by plaintiff, when defendant's car struck mare which was being led by rope attached to saddle on gelding upon which plaintiff was riding, was proper where negligence of defendant was shown by evidence that defendant had been drinking; that he was driving the car at 30-35 mph while passengers were hunting gophers beside the road; that defendant was not aware of the mare which he struck until the collision was inevitable; and that he failed to stop after realizing that he had struck horse in violation of section 32-1202. Parini v. Lanch, — M —, 418 P 2d 861, 864.

Questions of Fact

A jury question is presented only when reasonable men might differ as to the conclusions of fact to be drawn from the evidence, viewed in the light most favorable to the party against whom the motion is made. Parini v. Lanch, — M —, 418 P 2d 861, 863.

Review of Order Directing Verdict

In reviewing an order directing a verdict for the defendant, the supreme court would consider only the evidence of the plaintiff, excluding a bare scintilla but including every fair inference which might be drawn from the facts proved, as well as any evidence introduced by defendant which tended to support the plaintiff's case, and if the evidence viewed in the most favorable light tended to establish the case made by plaintiff's pleadings, the order would be reversed. McIntosh v. Linder-Kind Lumber Co., 144 M 1, 393 P 2d 782.

References

Holland v. Konda, 142 M 536, 385 P 2d 272; Tolson v. Tolson, 145 M 87, 399 P 2d 754.

CHAPTER 53—TRIAL BY THE COURT

93-5305. (9369) Want of findings—judgment not reversed.

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

93-5307. (9371) Exceptions to be filed and served on opposite party.

References

Tolson v. Tolson, 145 M 87, 399 P 2d 754.

CHAPTER 55—EXCEPTIONS—SETTLEMENT AND ALLOWANCE OF BILL

93-5501. (9386) Superseded—M. R. App. Civ. P.

Supersession

This section (Ap. p. Sec. 164, p. 75, Bannack Stat.), defining an exception and providing the time when the exception must be taken, is listed as superseded in Table A of M. R. App. Civ. P. See M. R. Civ. P., Rule 46.

93-5503. (9388) Superseded—M. R. App. Civ. P.

Supersession

This section (Ap. p. Sec. 166, p. 76, Bannack Stat.; Sec. 1, Ch. 92, L. 1905; Sec. 2, Ch. 225, L. 1921), relating to exceptions and objections, is listed as superseded in Table A of M. R. App. Civ. P. See M. R. Civ. P., Rule 46.

93-5504 to 93-5509. (9389 to 9394) Superseded—M. R. App. Civ. P., Rules 9, 10 and 25.

Supersession

These sections (Secs. 1154 to 1158, C. Civ. Proc. 1895; Sec. 1, Ch. 35, L. 1907; Secs. 3, 4, Ch. 225, L. 1921; Sec. 1, Ch. 19, L. 1941; Sec. 1, Ch. 85, L. 1955), relating to the settlement and allowance of bill of exceptions, are superseded by M. R. App. Civ. P., Rules 9, 10 and 25.

CHAPTER 56—NEW TRIALS—GROUNDS AND MOTIONS FOR—RECORD ON APPEAL FROM FINAL JUDGMENT

93-5601. (9395) New trial defined.

Parties Restored to Original Position

The granting of a motion for a new trial restores the parties to the positions they occupied before the trial and the action is commenced anew with the parties limited to their original pleadings but unbound by previous evidence and testimony except as held by existing rules of evidence. Waite v. Waite, 143 M 248, 389 P 2d 181.

93-5602. (9396) New trial in equity cases.

Irregularity in Proceedings

In an action for specific performance where plaintiff who had no knowledge of law or procedure acted as his own counsel and, though he received some assistance from the trial judge, many errors in the proceedings were shown in the record, it was within the discretion of the judge to grant defendant's motion for a new trial. Waite v. Waite, 143 M 248, 389 P 2d 181.

93-5603. (9397) When a new trial may be granted.

Appellate Review

In condemnation proceeding, where state appraised land at $18,000, condemnee appraised it at $95,000 and jury awarded condemnee $21,000, granting of new trial because award was inadequate was not such an abuse of trial judge's discretion as to warrant reversal in spite of fact that there was no rebuttal of state's only expert witness. State Highway Commission v. Greenfield, 145 M 164, 399 P 2d 989.

Inadequate Damages

The trial court had no power in a condemnation case to condition its denial of a new trial on acceptance by the highway commission of a higher award. State Highway Commission v. Schmidt, 143 M 505, 391 P 2d 692.

Jury Misconduct

In a condemnation proceeding, affidavits from jurors showing that a newspaper cartoon having to do with condemnation cases in general had been viewed by some members of the jury during the trial could not be used to support the motion for a new trial in the absence of a showing that the verdict was reached in a manner other than by a fair expression of opinion by the jurors. State Highway Commission v. Manry, 143 M 382, 390 P 2d 97.

New trial was properly granted where foreman of jury made his own investigation at the scene of the accident after hearing testimony and informed the other members of jury, during their deliberation, of the results of his investigation. The foreman was guilty of misconduct upon which verdict could be impeached by affidavits of jurors. Goff v. Kinzle, — M —, 417 P 2d 105, 107.

Trial court did not err in denying plaintiff's motion for a new trial, on the ground of misconduct of the jury during its deliberations, supported by affidavits of four jurors indicating that the irregularity was not on a material matter in dispute, where plaintiff was probably not prejudiced by juror's misconduct in improperly referring to prior litigation in which plaintiff had been involved, the poll of the jury showing an eight to four verdict for the plaintiff. Schmoyer v. Bourdeau, — M —, 420 P 2d 316, 317.

References

Waite v. Waite, 143 M 248, 389 P 2d 181.

93-5606. (9400) Hearing of motion—continuance—papers used.

Decision on Motion

A motion to alter, amend, and supplement findings of fact, conclusions of law and the judgment, combined with a motion for a new trial filed on September 28, 1965, was a motion contemplated by Montana Rules of Civil Procedure, Rules 52(b) and 59(e) and was not governed by the time limits of this section. State ex rel. Rozan v. District Court of Sixteenth Judicial District, — M —, 416 P 2d 19, 21.

Right to Appeal

Defendant was entitled to appeal in spite of the time limitation of this section for filing motion for new trial where the motion for a new trial was combined with one under Rules 52(b) and 59(a) for review of facts, conclusions of law and

judgment since limitation of this section did not apply to those rules prior to their adoption in 1961. Crissey v. State Highway Commission, — M —, 413 P 2d 308.

93-5607, 93-5608. (9401, 9402) **Superseded—M. R. App. Civ. P., Rules 7, 9, 10 and 25.**

Supersession

These sections (Ap. p. Sec. 289, p. 115, L. 1877; Ap. p. Secs. 1175, 1176, C. Civ. Proc. 1895; Sec. 4, Ch. 41, L. 1907; Sec. 9, Ch. 225, L. 1921), relating to a stay of proceedings on notice of motion for a new trial and contents of record on appeal, are superseded by M. R. App. Civ. P., Rules 7, 9, 10 and 25.

CHAPTER 57—JUDGMENT—MANNER OF GIVING AND ENTRY—JUDGMENT ROLL AND DOCKET—LIEN OF

Section 93-5708. Judgment lien—when it begins and when it expires.
93-5710.1. Judgment or decree recorded before 1965 as notice of contents—certified copies as evidence.
93-5710.2. Judgment or decree recorded before 1967 as notice of contents—certified copies as evidence.

93-5702. (9404) **Superseded—M. R. App. Civ. P., Rule 29.**

Supersession

This section (Sec. 174, p. 77, Bannack Stat.), providing for bringing of a case before the court for argument where the case has been reserved for argument, is superseded by M. R. App. Civ. P., Rule 29.

93-5707. (9409) **Superseded—M. R. App. Civ. P., Rules 9, 10 and 25.**

Supersession

This section (Ap. p. Sec. 203, p. 174, L. 1867; Sec. 1, Ch. 36, L. 1921; Sec. 1, Ch. 146, L. 1925), relating to the contents and filing of judgment roll, is superseded by M. R. App. Civ. P., Rules 9, 10 and 25.

93-5708. (9410) **Judgment lien—when it begins and when it expires.** Immediately after the entry of the judgment in the judgment book, the clerk must make the proper entries of the judgment, under appropriate heads, in the docket kept by him; and from the time the judgment is docketed it becomes a lien upon all real property of the judgment debtor not exempt from execution in the county, owned by him at the time, or which he may afterward acquire, until the lien ceases. The lien continues for six years, unless the judgment be previously satisfied.

History: Ap. p. Sec. 180, p. 78, Bannack Stat.; en. Sec. 204, p. 174, L. 1867; re-en. Sec. 244, p. 77, Cod. Stat. 1871; amd. Sec. 1, p. 40, L. 1876; re-en. Sec. 295, p. 116, L. 1877; re-en. Sec. 295, 1st Div. Rev. Stat. 1879; re-en. Sec. 307, 1st Div. Comp. Stat. 1887; re-en. Sec. 1197, C. Civ. Proc. 1895; re-en. Sec. 6807, Rev. C. 1907; re-en. Sec. 9410, R. C. M. 1921; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 671.

Advisory Committee's Note

Subdivision (b) of Rule 41, M. R. App. Civ. P., eliminates the reference in section 93-5708 to judgment rolls, which are nowhere provided for in Montana Rules of Appellate Civil Procedure.

Amendments

The 1965 amendment substituted "the entry of the judgment in the judgment book" for "after filing the judgment roll" near the beginning of the section.

93-5710.1. Judgment or decree recorded before 1965 as notice of contents—certified copies as evidence. Any judgment or decree of any court of this state affecting real property, provided that no action is now pending

to set aside any such judgment or decree, which was, previous to the date this act takes effect, copied into the proper book, kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired, and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree, or of the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

History: En. Sec. 1, Ch. 124, L. 1965.

Title of Act

An act to validate records of court proceedings containing defects, omissions, informalities or irregularities in obtaining a judgment or decree affecting real property, in which time for appeal has expired; providing that duly certified copies of such judgment or decree may be read in evidence with the same effect as judgments or decrees duly and regularly obtained, recorded and entered; and providing for a repealing clause.

Repealing Clause

Section 2 of Ch. 124, Laws 1965 repealed all acts and parts of acts in conflict therewith.

93-5710.2. Judgment or decree recorded before 1967 as notice of contents —certified copies as evidence. Any judgment or decree of any court of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, prior to January 1, 1967, copied into the proper book, kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired, and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree, or of the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

History: En. Sec. 1, Ch. 184, L. 1967.

Title of Act

An act to validate records of court proceedings prior to January 1, 1967, containing defects, omissions, informalities or irregularities in obtaining a judgment or decree affecting real property, in which time for appeal has expired; providing that duly certified copies of such judgment or decree may be read in evidence with the same effect as judgments or decrees duly and regularly obtained, recorded and entered.

CHAPTER 58—THE EXECUTION

Section 93-5813.1. Waiver of exemptions prohibited in unsecured note.
93-5846. Validation of judicial sales before 1967.

93-5813.1. Waiver of exemptions prohibited in unsecured note. Any waiver of statutory exemption from execution in an unsecured promissory note shall be unenforceable.

History: En. Sec. 1, Ch. 172, L. 1965.

Title of Act

An act to prohibit waiver of statutory exemptions.

93-5824. (9432) **Notice of sale—how given—copy of notice.**

Sale of Real Property

District court ordering the restraining of a sale of real property on execution can determine if additional notice is required after the injunction is lifted if the initial notice requirements of this section have been met. Williams v. Superior Homes, Inc., — M —, 417 P 2d 92, 95.

93-5846. Validation of judicial sales before 1967. All judicial sales of real property prior to January 1, 1967, provided no action is now pending to set such sale aside, where made in this state on proceedings to satisfy valid judgments or decrees of any court and the moneys bidden thereon paid to the officer making such sale, shall be valid and sufficient in law to sustain a sheriff's deed based on such sale, and when no such deed deed has been executed, shall entitle such purchaser to such deed; and such deed, if now or when executed, shall be sufficient to convey all the title of judgment debtor at the time of such sale in the premises so sold to the purchaser at said sale, and all defects or irregularities in the issuance of execution, or the manner of making or conducting the sale, or in the recitals or references in such deed, shall be disregarded and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 180, L. 1967.

Compiler's Notes

Except for the date in the second line of text, the above section is identical with sec. 1, ch. 57, Laws of 1965, previously compiled at this section. The compiler has therefore substituted the above section for the 1965 section.

Title of Act

An act relating to validation of judicial sales prior to January 1, 1967, of real property and curing defects or irregularities in the issuance of execution, manner of making or conducting the sale, or in the recitals or references in sheriffs' deeds.

CHAPTER 60—FORECLOSURE OF MORTGAGES—ACTIONS FOR—SALES UNDER POWERS

93-6001. (9467) **Proceedings in foreclosure suits.**

Deficiency Judgment

The purpose of this section is to require the mortgagee to bring one foreclosure action to enforce "any right" protected by the mortgage. If the price bid in at foreclosure is insufficient to reimburse the mortgagee, a deficiency judgment may be entered against the mortgagor for the balance due and may be enforced by a lien upon the real property of the mortgagor only. Stallings v. Erwin, — M —, 419 P 2d 480, 482.

Tax Lien

Where, subsequent to purchase of tax certificates, mortgagee foreclosed the mortgage, the foreclosure sale cut off any lien asserted by mortgagee for taxes paid although the mortgage permitted mortgagee to pay taxes and collect the same

upon foreclosure. Stallings v. Erwin, — M —, 419 P 2d 480, 483.

A mortgagee who pays taxes on the mortgaged property prior to foreclosure does not acquire a distinct and separate lien on the property which survives the foreclosure sale. Stallings v. Erwin, — M —, 419 P 2d 480, 483.

CHAPTER 62—QUIETING TITLE TO PROPERTY, REAL AND PERSONAL AND OTHER ACTIONS CONCERNING REAL ESTATE

93-6216. (9492) **An order may be made to allow a party to survey, etc.**

References

State ex rel. State Highway Commission v. District Court, — M —, 412 P 2d 832.

93-6218. (9494) **Petition for order—procedure.**

References

State ex rel. State Highway Commission v. District Court, — M —, 412 P 2d 832.

CHAPTER 64—QUO WARRANTO

93-6405. (9580) **When private person may commence action.**

Unqualified Appointee

Taxpayer was not entitled to an injunction in action questioning the qualifications of supervisor appointed by board of railway commissioners in proper exercise of their discretion. Steel v. Board of Railroad Commrs., 144 M 432, 397 P 2d 101.

CHAPTER 67—JUSTICES' COURTS—MANNER OF COMMENCING ACTIONS IN

Section 93-6711. Service of summons.

93-6711. (9636) **Service of summons.** The summons may be served by a sheriff or constable of any of the counties of this state; provided, that when a summons issued by a justice of the peace is to be served out of the county in which it was issued, the summons shall have attached to it a certificate under seal by the county clerk of the county in which it was issued, to the effect that the person issuing the same was an acting justice of the peace at the date of the summons; or the summons may be served by any male person resident in the state, over the age of eighteen (18) years, not a party to the suit, and must be served and returned as provided in Montana Rules of Civil Procedure, Rule 4D (2), (3), (4), (8), and (9); or it may be served by publication, provided in Montana Rules of Civil Procedure, Rule 4D (5) and (8), so far as they relate to publication of summons, are made applicable to justices' courts; the word "justice" being substituted for the word "clerk" whenever the latter word occurs.

History: En. Sec. 1510, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 61, L. 1903; re-en. Sec. 7003, Rev. C. 1907; re-en. Sec. 9636, R. C. M. 1921; amd. Sec. 1, Ch. 110, L. 1967. Cal. C. Civ. Proc. Sec. 850.

Amendments

The 1967 amendment substituted "Montana Rules of Civil Procedure, Rule 4D (2), (3), (4), (8), and (9)" for "sections 93-3006 and 93-3007" after "as provided in"; and substituted "provided in Montana Rules of Civil Procedure, Rule 4D (5) and (8)" for "and sections 93-3013, 93-3014 and 93-3015" after "by publication."

CHAPTER 68—JUSTICES' COURTS—PLEADINGS IN

Section 93-6802.1. Permissible pleadings enumerated.
93-6802.2. Demurrers and pleas abolished.

93-6802. (9639) **Pleadings in justices' courts.**

Compiler's Notes
This section appears to have been superseded by secs. 93-6802.1 and 93-6802.2.

93-6802.1. Permissible pleadings enumerated. In justice court there shall be a complaint and answer; and there shall be a reply to a counterclaim denominated as such; and an answer to a cross-claim; a third-party complaint, if a person who is not an original party is brought into the action; and there shall be a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

History: En. Sec. 1, Ch. 168, L. 1967.

Title of Act
An act designating the pleadings to be allowed in justice court and designating the form thereof.

93-6802.2. Demurrers and pleas abolished. Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used.

History: En. Sec. 2, Ch. 168, L. 1967.

Repealing Clause
Section 3 of Ch. 168, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 77—JUSTICES' COURTS—GENERAL PROVISIONS

Section 93-7712. Depositions—how taken.

93-7712. (9722) **Depositions—how taken.** Depositions to be used in justices' courts shall be taken as provided in Rules 26 and 28 to 32, inclusive of the Montana Rules of Civil Procedure.

History: En. Sec. 1691, C. Civ. Proc. 1895; re-en. Sec. 7089, Rev. C. 1907; re-en. Sec. 9722, R. C. M. 1921; amd. Sec. 1, Ch. 167, L. 1967.

Amendments
The 1967 amendment substituted "shall" for "may" after "justices' courts"; and substituted "Rules 26 and 28 to 32, inclusive of the Montana Rules of Civil Procedure" for "sections 93-1801-1 to 93-1801-6."

CHAPTER 80—SUPREME COURT—APPEALS TO

Section 93-8001. How judgments and orders may be reviewed.
93-8002. Party aggrieved may appeal—names of parties.
93-8013. Deposit in lieu of undertaking.

93-8001. (9729) **How judgments and orders may be reviewed.** A judgment or order in a civil action, except when expressly made final by this code, may be reviewed as prescribed in sections 93-7901 to 93-7908, and by the Rules of Appellate Civil Procedure, and not otherwise.

History: En. Sec. 248, p. 94, Bannack Stat.; re-en. Sec. 317, p. 199, L. 1867; re-en. Sec. 366, p. 107, Cod. Stat. 1871; re-en. Sec. 405, p. 149, L. 1877; re-en. Sec. 405, 1st Div. Rev. Stat. 1879; re-en. Sec. 418, 1st Div. Comp. Stat. 1887; re-en. Sec. 1720, C. Civ. Proc. 1895; re-en. Sec. 7096, Rev. C. 1907; re-en. Sec. 9729, R. C. M. 1921; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 936.

Advisory Committee's Note

Subdivisions (c), (d), (e) of Rule 41, M. R. App. Civ. P. amend this section, and sections 93-8002 and 93-8013 which contain references to appeals from justices' courts to district courts, so as to preserve the existing procedure applicable to such appeals.

Amendments

The 1965 amendment substituted "by the Rules of Appellate Civil Procedure" for "93-8001 to 93-8023" after "93-7908 and" and made a minor change in punctuation.

93-8002. (9730) **Party aggrieved may appeal—names of parties.** A party aggrieved may appeal in the cases prescribed in sections 93-7901 to 93-7908 and the Rules of Appellate Civil Procedure.

History: En. Sec. 248, p. 94, Bannack Stat.; amd. Sec. 319, p. 199, L. 1867; re-en. Sec. 368, p. 107, Cod. Stat. 1871; re-en. Sec. 407, p. 150, L. 1877; re-en. Sec. 407, 1st Div. Rev. Stat. 1879; re-en. Sec. 420, 1st Div. Comp. Stat. 1887; re-en. Sec. 1721, C. Civ. Proc. 1895; re-en. Sec. 7097, Rev. C. 1907; re-en. Sec. 9730, R. C. M. 1921; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 938.

Amendments

The 1965 amendment substituted "the Rules of Appellate Civil Procedure" for "93-8001 to 93-8023" at the end of the present section and omitted a former second sentence which read: "The party appealing is known as the appellant, and the adverse party as the respondent."

93-8003 to 93-8006. (9731 to 9734) **Superseded — M. R. App. Civ. P., Rules 1 and 4 to 6.**

Supersession

These sections (Ap. p. Secs. 251, 252, 262, pp. 95, 97, Bannack Stat.; Secs. 320, 331, pp. 199, 201, L. 1867; Secs. 408 to 410, 431, pp. 150, 151, 157, L. 1877; Sec. 1, pp. 146, 147, L. 1899; Secs. 10, 11, Ch. 225, L. 1921; Sec. 1, Ch. 39, L. 1925; Sec. 1, Ch. 41, L. 1941), relating to appealable judgments and orders, the taking of an appeal and the time therefor, and the undertaking or deposit on appeal, are superseded by M. R. App. Civ. P., Rules 1 and 4 to 6.

93-8011, 93-8012. (9739, 9740) **Superseded—M. R. App. Civ. P., Rules 6 and 7.**

Supersession

These sections (Ap. p. Secs. 268, 269, p. 99; Sec. 337, p. 202, L. 1867; Sec. 415, p. 152, L. 1877), relating to stay of proceedings and undertaking on appeal, are superseded by M. R. App. Civ. P., Rules 6 and 7.

93-8013. (9741) **Deposit in lieu of undertaking.** In all cases where an undertaking is required on appeal by the provisions of sections 93-7901 to 93-7908, a deposit in the court below of the amount of the judgment appealed from, and three hundred dollars in addition, shall be equivalent to filing the undertaking; and in all such cases the undertaking or deposit may be waived by the written consent of the respondent.

History: En. Sec. 388, p. 112, Cod. Stat. 1871; re-en. Sec. 417, p. 153, L. 1877; re-en. Sec. 417, 1st Div. Rev. Stat. 1879; re-en. Sec. 430, 1st Div. Comp. Stat. 1887; amd. Sec. 1732, C. Civ. Proc. 1895; re-en. Sec. 7108, Rev. C. 1907; re-en. Sec. 9741, R. C. M. 1921; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 948.

Amendments

The 1965 amendment rewrote this section. For previous text, see parent volume.

93-8014 to 93-8025. (9742 to 9753) Superseded—M. R. App. Civ. P.

Supersession

These sections (Secs. 260, 271, 273, pp. 96, 99, 100, Bannack Stat.; Sec. 342, p. 204, L. 1867; Secs. 418, 426 to 428, pp. 153, 156, L. 1877; Secs. 1733 to 1735, 1737, 1739 to 1744, C. Civ. Proc. 1895; Sec. 2, Ch. 35, L. 1907; Sec. 3, Ch. 42, L. 1907; Sec. 1, Ch. 47, L. 1909; Secs. 12 to 14, Ch. 225, L. 1921; Sec. 1, Ch. 19, L. 1925; Sec. 1, Ch. 87, L. 1929), relating to appeals from district courts, are superseded by the Rules of Appellate Civil Procedure. For designation of superseding rule see M. R. App. Civ. P., Table B.

CHAPTER 86—COSTS AND DISBURSEMENTS—COST BILL—SUIT IN FORMA PAUPERIS

93-8602. (9787) When allowed, of course, to the plaintiff.

Attorney's Fees

On foreclosure of mortgage, federal tax lien took priority over attorney's fees allowed under section 93-8613 since attorney's lien failed to meet "choate" test at the time the amount of federal taxes owed on the property was fixed. First Nat. Bank of Lewistown v. Tilzey, 238 F Supp 750.

93-8605. (9790) When the several defendants are not united, etc.

References

State ex rel. Gage v. District Court, — M —, 419 P 2d 746, 748.

93-8606. (9791) Costs of appeal discretionary with the court, etc.

References

Stalcup v. Montana Trailer Sales & Equipment Co., 146 M 494, 409 P 2d 542.

93-8613. (9798) Counsel fees on foreclosure.

Priority of Claim

On foreclosure of mortgage, federal tax lien took priority over attorney's fees allowed under this section since attorney's lien failed to meet "choate" test at the time the amount of federal taxes owed on the property was fixed. First Nat. Bank of Lewistown v. Tilzey, 238 F Supp 750.

93-8618. (9802) What are costs and disbursements.

Attorney Fees

Attorney fees are not included as costs under this section, so that if such costs are not allowed under section 21-137, which requires showing by motion that wife cannot take an appeal without the allowance, she is not entitled to them on execution under section 93-8621. State ex rel. Sowerwine v. District Court, 145 M 375, 401 P 2d 568.

References

Kintner v. Harr, 146 M 461, 408 P 2d 487; State ex rel. Ald, Inc. v. District Court, — M —, 410 P 2d 944.

93-8621. (9805) Costs on appeal—how claimed.

Execution Void

In divorce proceeding, inclusion in memorandum of both allowable statutory costs under section 21-137 and attorney's fee, to which the wife was not entitled because of failure to file motion on appeal, constituted noncompliance with this section and made the execution void. State ex rel. Sowerwine v. District Court, 145 M 375, 401 P 2d 568.

References

State ex rel. Ald, Inc. v. District Court, — M —, 410 P 2d 944.

CHAPTER 89—UNIFORM DECLARATORY JUDGMENTS ACT

93-8901. (9835.1) Scope.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Declaratory Judgments Act: Oklahoma and Virginia.

Supreme Court

Supreme court could accept original jurisdiction in suit for declaratory judgment where statute which taxed nonresident contractors indiscriminately was declared unconstitutional, since supreme court was a court of record and under its own rules could accept original jurisdiction in emergency situations. State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

Termination of Annexation Proceedings

Where a majority of the resident freeholders of a first class city validly protested proposed annexation under section 11-403 (1), but city council instead of terminating the annexation proceedings took arbitrary action, mandamus was proper to compel council to terminate the process. This chapter did not furnish the protestants a plain, speedy and adequate remedy. State ex rel. Konen v. City of Butte, 144 M 95, 394 P 2d 753, 757.

References

Harrer v. Northern Pacific Ry. Co., — M —, 410 P 2d 713.

93-8906. (9835.6) Discretionary.

Dismissal of Action

Court did not abuse its discretion in dismissing insurance company's action for declaratory judgment that defendant's policy was void because obtained by fraud, since, under section 93-8911, there were possible parties not joined, defendant having been in an accident several months prior to expiration of the policy, and under this section, court could refuse to enter the judgment on the basis that it would not terminate the controversy as to all parties. Empire Fire & Marine Ins. Co. v. Goodman, — M —, 412 P 2d 569.

93-8909. (9835.9) Jury trial.

References

Mahan v. Hardland, — M —, 410 P 2d 156.

93-8911. (9835.11) Parties.

Dismissal of Action

Court could take into account this section in refusing to grant declaratory judgment in favor of insurance company which claimed that defendant's policy was void when accident in which he was involved occurred because there were other parties not joined and therefore the declaratory judgment would not terminate the controversy should other parties sue defendant. Empire Fire & Marine Ins. Co. v. Goodman, — M —, 412 P 2d 569.

References

Harrer v. Northern Pacific Ry. Co., — M —, 410 P 2d 713.

93-8912. (9835.12) Construction.

References

Harrer v. Northern Pacific Ry. Co., — M —, 410 P 2d 713.

CHAPTER 90—CERTIORARI (WRIT OF REVIEW)

93-9002. (9837) When and by what courts granted.

References

Mailey v. Board of County Commrs., 142 M 505, 385 P 2d 74.

93-9008. (9843) The review under the writ, extent of.

References

Mailey v. Board of County Commrs., 142 M 505, 385 P 2d 74.

CHAPTER 91—MANDAMUS (WRIT OF MANDATE)

93-9102. (9848) When and by what court issued.

Discretionary Actions

Mandamus lies only to compel performance of an act, not to correct action already done, so that where state board of land commissioners exercised discretion in awarding lease of land to lowest bidder, mandamus was not the proper writ to pursue in seeking a remedy. State ex rel. Thompson v. Babcock, — M —, 409 P 2d 808.

Termination of Annexation Proceedings

Where a majority of the resident freeholders of a first class city validly protested proposed annexation under section 11-403 (1), but city council instead of terminating the annexation proceedings, took arbitrary action, mandamus was proper to compel council to terminate the process. The Uniform Declaratory Judgments Act (93-8901 to 93-8916) did not furnish the protestants a plain, speedy and adequate remedy. State ex rel. Konen v. City of Butte, 144 M 95, 394 P 2d 753, 757.

93-9103. (9849) Writ—when and upon what to issue.

Appealable Matters

Engineer seeking registration from state board had no right to a writ of mandamus where discretion of the board was subject to review under section 66-2345. Heldenbrand v. Montana State Board of Registration for Professional Engineers and Land Surveyors, — M —, 411 P 2d 744.

93-9112. (9858) Damages, costs and peremptory mandate, etc.

References

State ex rel. Thompson v. Babcock, — M —, 409 P 2d 808.

CHAPTER 92—PROHIBITION—WRIT OF

93-9201. (9861) Prohibition defined.

References

State ex rel. Belwin, Inc. v. Davison, — M —, 420 P 2d 842, 844.

CHAPTER 97—FORCIBLE ENTRY AND UNLAWFUL DETAINER—ACTIONS FOR

93-9703. (9889) Unlawful detainer defined.

Landlord-tenant Relationship Required

An action for unlawful detainer can succeed only where the relation of landlord-tenant exists. Kransky v. Hensleigh, 146 M 486, 409 P 2d 537.

Unlawful Ejectment

In case of unlawful ejectment, plaintiff, who had farmed land for three years, paying one third of each crop as rent, was not a sharecropper but a tenant with an interest in the land for a term and it was proper for the judge to instruct the jury that if plaintiff held without notice to quit more than sixty days after expiration of his term he was deemed to be holding by permission of the defendant-landlords and not guilty of unlawful detainer. Kenfield v. Curry, 145 M 174, 399 P 2d 999.

CHAPTER 98—CONTEMPTS

93-9801. (9908) What acts or omissions are contempts.

References

Weinheimer v. Scott, 143 M 243, 388 P 2d 790.

CHAPTER 99—EMINENT DOMAIN

Section 93-9905. Facts necessary to be found before condemnation.
93-9913. The date with respect to which compensation shall be assessed.

93-9904. (9936) Private property defined—classes enumerated.

Underpass

Where 40.89 acres of ranch land were taken by the state highway commission as a right of way for an interstate highway, consisting of four lanes in width and fully controlled access, which split the remaining land into two divisions, leaving 432.69 acres, on which farm headquarters was located, on the north side of the highway and 393.42 acres on the south side of the highway, trial court in its preliminary order of condemnation properly ordered the commission to construct and maintain at its own expense an underpass leading from one side of the highway to the other. State ex rel. State Highway Commission v. Wheeler, — M —, 419 P 2d 492, 496.

93-9905. (9937) Facts necessary to be found before condemnation.

1 and 2. * * * [Same as parent volume.]

3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use. The plaintiff or defendant, or any party interested in the proceedings, can appeal to the supreme court from any finding or judgment made or rendered under this chapter, as in other cases. Such appeal does not stay any further proceedings under this chapter, except that the district court on motion or ex parte may grant a stay for such period of time and under such conditions as the court deems proper.

History: En. Sec. 583, p. 191, L. 1877; re-en. Sec. 583, 1st Div. Rev. Stat. 1879; re-en. Sec. 601, 1st Div. Comp. Stat. 1887; amd. Sec. 2214, C. Civ. Proc. 1895; re-en. Sec. 7334, Rev. C. 1907; re-en. Sec. 9937, R. C. M. 1921; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 1241.

Advisory Committee's Note

Subdivision (f) Rule 41, M. R. App. Civ. P., amends the provision of subdivision 3 of this section to permit the district court to stay proceedings on appeals in eminent domain cases, as is permitted by Rule 7(a) of these rules in other cases. See Tables A, B, C, M. R. App. Civ. P. for reference to other amendments.

Amendments

The 1965 amendment added the exception at the end of the section.

Burden of Proof

Where commission condemned defendant's land to build bypass through it rather than reconstruct highway through town, it became incumbent upon the defendant to show fraud, abuse of discretion or arbitrary action in order to defeat the commission's action, while the commission had only to establish that the taking of the property was reasonably necessary for rebuilding the highway. State Highway Commission v. Crossen-Nissen Co., 145 M 251, 400 P 2d 283.

Condemnor's Discretion

Highway commission did not abuse its discretion in taking farm land by eminent domain even though it was shown that town through which old highway had passed would be financially harmed and bypass would cost more to build, since the resulting savings in travel costs to highway users, in addition to the compensation paid the petitioners, offset disadvantages claimed by them. State Highway Commission v. Crossen-Nissen Co., 145 M 251, 400 P 2d 283.

Necessity of Use

Even when necessity has been challenged on the ground of arbitrariness or excessiveness of the taking, condemnor still has discretion to determine the location, route and area of the land to be taken. State Highway Commission v. Crossen-Nissen Co., 145 M 251, 400 P 2d 283.

The word "necessary" as used in this section does not mean that the property must be indispensable to the proposed project, but that it must be reasonably requisite and proper for the accomplishment of the purpose for which it is sought under the peculiar circumstances of each case. State Highway Commission v. Crossen-Nissen Co., 145 M 251, 400 P 2d 283.

References

State Highway Commission v. Danielsen, 146 M 539, 409 P 2d 443.

93-9906. (9938) **Parties may make location—may enter, etc.**

References

State Highway Commission v. Danielsen, 146 M 539, 409 P 2d 443.

93-9911. (9943) **Power of court—preliminary condemnation order.**

Underpass

Where 40.89 acres of ranch land were taken by the state highway commission as a right of way for an interstate highway, consisting of four lanes in width and fully controlled access, which split the remaining land into two divisions, leaving 432.69 acres, on which farm headquarters was located, on the north side of the highway and 393.42 acres on the south side of the highway, trial court in its preliminary order of condemnation properly ordered the commission to construct and maintain at its own expense an underpass leading from one side of the highway to the other. State ex rel. State Highway Commission v. Wheeler, — M —, 419 P 2d 492, 496.

93-9912. (9944) **Appointment and meeting of commissioners.**

Apportionment of Damages

It was not error for the jury to express its award of damages separately to lessor and lessee rather than state a single lump sum when such award was not excessive, was supported by substantial evidence, and did not reflect an increased valuation due solely to a distribution of interest. State Highway Commission v. City Service Co., 142 M 559, 385 P 2d 604.

Measure of Damages—Leasehold Interests

The proper value of a leasehold interest is the fair market value not the market value less future rent to be paid. State Highway Commission v. City Service Co., 142 M 559, 385 P 2d 604.

Severance Damages

While it is proper for the trial court to determine whether there has been an impairment of access, the question of the extent to which access has been impaired is for the jury, and it was not error for the court to refuse to give instructions to the effect that all means of access to the defendant's property had been destroyed. State Highway Commission v. Manry, 143 M 382, 390 P 2d 97.

Verdict Form

It was not prejudicial error for the trial judge to give the jury a verdict form which was in accord with this section and which verdict was not out of proportion to the damage done the defendant. State Highway Commission v. Manry, 143 M 382, 390 P 2d 97.

93-9913. (9945) **The date with respect to which compensation shall be assessed.** For the purpose of assessing compensation the right thereto shall be deemed to have accrued at the date of the service of the summons, and its actual value as of that date shall be the measure of compensation for all property to be actually taken, and the basis of depreciation in value of property not actually taken, but injuriously affected, and the reasonable cost of removal of all necessary personal property from the condemned real property within a reasonable distance in the area, not to exceed the sum of six thousand dollars ($6,000) in the case of a business, farm or ranch relocation, and not to exceed the sum of four hundred dollars ($400) in any other case. This shall not be construed to limit the amount of compensation payable by the state highway commission under the provisions of any legislation enacted pursuant to the Federal Highway Beautification Act of 1965. If an order be made letting the plaintiff into possession, as provided in section 93-9920, the full amount finally awarded shall draw lawful interest from the date on which the property owner surrenders possession of the property in accordance with the terms of such order to the earlier of the following dates:

(a) The date on which the right to appeal to the Montana supreme court expires, or if appeal is filed, to the date of final decision by the supreme court, or

(b) The date on which the property owner withdraws from court the full amount finally awarded.

If the property owner withdraws from court a fraction of the amount finally awarded, interest on such fraction shall cease on the date it is withdrawn but interest on the remainder of the amount finally awarded shall continue to the earlier of the aforesaid dates defined in (a) and (b) of this section. None of the amount finally awarded shall draw interest after the date on which the right to appeal to the Montana supreme court expires. No improvements put upon the property, subsequent to the date of the service of summons, shall be included in the assessment of compensation or depreciation in value, nor shall the same be used as the basis of computing such compensation or depreciation.

History: En. Sec. 591, p. 194, L. 1877; re-en. Sec. 591, 1st Div. Rev. Stat. 1879; re-en. Sec. 609, 1st Div. Comp. Stat. 1887; amd. Sec. 2222, C. Civ. Proc. 1895; re-en. Sec. 7342, Rev. C. 1907; re-en. Sec. 9945, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1957; amd. Sec. 5, Ch. 234, L. 1961; amd. Sec. 1, Ch. 182, L. 1965; amd. Sec. 1, Ch. 187, L. 1967. Cal. C. Civ. Proc. Sec. 1249.

Compilers' Notes

The Federal Highway Beautification Act of 1965, referred to in the first paragraph of this section, is compiled in the United States Code as Tit. 23, secs. 131, 136 and 319.

Amendments

The 1965 amendment divided the section into paragraphs; substituted "full amount finally awarded" for "amount awarded" before "shall draw lawful interest" in the third sentence of the first paragraph; substituted "earlier of the following dates" and clauses (a) and (b) at the end of the first paragraph for "date of receipt of the award or any portion thereof"; and substituted the first two sentences of the final paragraph for "provided, however, that interest shall not be allowed or paid on so much thereof as shall have been paid to the landowner involved or withdrawn by such landowner from the court."

The 1967 amendment, in the first paragraph, added, "and the reasonable cost * * * in any other case" at the end of the first sentence; inserted the second sentence; and, at the end of subparagraph (a), added "if appeal is filed, to the date of final decision by the supreme court, or".

Separability Clause

Section 2 of Ch. 182, Laws 1965 read "If any section, paragraph, sentence, clause or provision of this act shall for any reason be held invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, paragraphs, sentences, clauses or provisions of this act."

Repealing Clause

Section 3 of Ch. 182, Laws 1965 read "All acts, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any act or part thereof, heretofore repealed."

Effective Date

Section 4 of Ch. 182, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 4, 1965.

Appeal

In eminent domain proceedings the findings of the district court will generally not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided for by section 14, article III of the Montana constitution. State Highway Commission v. Woodcock, — M —, 411 P 2d 357.

Assessment of Compensation

Where condemnee's house was between 50 and 60 years old and had been converted into a multiple family dwelling, court did not err in excluding evidence of reconstruction costs or comparable sales elsewhere in determining value of the property since there was no way of determining depreciation of the old house in arriving at reconstruction cost figures, nor were there sufficient comparable sales in the area. State Highway Commission v. Tubbs, — M —, 411 P 2d 739.

Commercial Use

Where state highway commission in order to show public access to highway presented two appraisal witnesses to show that there was access at a certain exit in which case there would be no loss of commercial usefulness, it was quite proper and necessary to rebut this testimony and to let the jury know the type of easement provided for the access exit. State ex rel. State Highway Commission v. Wheeler, — M —, 419 P 2d 492, 498.

Cost of Moving Personal Property

Where friends of condemnees gratuitously aided them in moving personal property from condemned realty, condemnees were not entitled to recover the costs of their friends' labor as an element of damages. State Highway Commission v. Manry, 143 M 382, 390 P 2d 97.

Depreciation on Inventory

This section requires the state to pay for any damage to personal property removed from condemned land including any depreciation in the inventory value of such property. State Highway Commission v. City Service Co., 142 M 559, 385 P 2d 604.

Improvements

In eminent domain proceeding trial court did not err in excluding evidence concerning improvement of sole access road to ranch property remaining after state highway commission had taken part of the property for right of way for interstate highway, where any changes in access were made after the date of service of the summons in the condemnation action. State ex rel. State Highway Commission v. Wheeler, — M —, 419 P 2d 492, 497.

Market Value

The proper value of a leasehold interest is the fair market value not the market value less future rent to be paid. State Highway Commission v. City Service Co., 142 M 559, 385 P 2d 604.

Where state not only took part of plaintiff's land, but also eliminated an old channel of water and diked up a new channel, thus creating a flood basin on plaintiff's land, evidence of actual results of taking was proper, even though land values are usually measured as of the date of summons. State Highway Commission v. Biastoch Meats, Inc., 145 M 261, 400 P 2d 274.

When there is a market for the type of property being condemned, and the property has no other intrinsic value, courts will adopt a market value in determining the actual value of the property, which is nothing more than the price resulting from fair negotiations between a willing seller and buyer. State Highway Commission v. Tubbs, — M —, 411 P 2d 739.

References

State Highway Commission v. Churchwell, 146 M 52, 403 P 2d 751.

93-9915. (9947) Appeal from assessment of commissioners.

Apportionment of Damages

It was not error for the jury to express its award of damages separately to lessor and lessee rather than state a single lump sum when such award was not excessive, was supported by substantial evidence, and did not reflect an increased valuation due solely to a distribution of title. State Highway Commission v. City Service Co., 142 M 559, 385 P 2d 604.

93-9917. (9949) Payment of damages or deposit of bond therefor.

Delay in Payment of Damages

In eminent domain proceedings where the state highway commission did not move within thirty days as required by this section, it could not excuse its failure to pay by alleging that it had no notice of the entry of judgment when the commission itself had caused the judgment to be entered. Robertson v. State Highway Commission, — M —, 420 P 2d 21, 24.

93-9918. (9950) Damages—to whom paid.

Delay in Payment of Damages

In eminent domain proceeding where the state highway commission did not move within thirty days as required by section 93-9917, it could not excuse its failure to pay by alleging that it had no notice of the entry of the judgment when the commission itself had caused the judgment to be entered. Robertson v. State Highway Commission, — M —, 420 P 2d 21, 24.

Stay of Execution

Where state highway commission filed notice of appeal and perfected their appeal after writ of execution under this section had issued, the appeal stayed the judgment although no bond was filed as required by section 93-8011 since under Rule 62(e), no security was required from the state. Robertson v. State Highway Commission, — M —, 420 P 2d 21, 24.

93-9920. (9952) Putting plaintiff in possession.

References

State Highway Commission v. Schmidt, 143 M 505, 391 P 2d 692 (concurring opinion); State Highway Commission v. Churchwell, 146 M 52, 403 P 2d 751.

CHAPTER 301—EVIDENCE—DEFINITIONS—KINDS AND DEGREES OF

93-301-11. (10498) Prima-facie evidence defined.

Ownership of Cattle

Although under sections 46-606 and 67-308 prima facie the owners of the recorded brand have the same interest in the cattle bearing their brand as shown in brand record, joint ownership of the cattle may be contradicted and overcome by other evidence under this section. Marshall v. Minlschmidt, — M —, 419 P 2d 486, 490.

In action by administrator of estate of deceased partner against surviving partners to recover assets transferred by deceased during his last illness, evidence that deceased had a half interest in partnership cattle and failure of defendants to produce any of the partnership records at the trial in the lower court, sustained finding that heir of deceased had overcome the prima facie showing of one-third interest in the partnership cattle arising from the recording of the brand in name of three persons. Marshall v. Minlschmidt, — M —, 419 P 2d 486, 491.

CHAPTER 401—EVIDENCE—GENERAL PRINCIPLES OF

93-401-4. (10508) Witness presumed to speak the truth.

Accomplice as Witness

In a first degree burglary case the credibility of the defendant's accomplice, a convicted felon, was for the jury. State v. Barick, 143 M 273, 389 P 2d 170.

93-401-9. (10513) Declaration of decedent evidence of pedigree.

References

Cited in Bender v. Bender, 144 M 470, 397 P 2d 957.

93-401-11. (10515) When part of the transaction proved, etc.

References

State Highway Commission v. Churchwell, 146 M 52, 403 P 2d 751.

93-401-12. (10516) Contents of writing—how proved.

Laboratory Test Results

In an action for damages for death of dairy cows and losses occasioned by poisoning, allowing cattle owner to testify concerning laboratory test results was not prejudicial where the testimony was brought out properly later without objection. Hopkins v. Ravalli County Electric Cooperative, Inc., 144 M 161, 395 P 2d 106, 109.

93-401-13. (10517) An agreement reduced to writing deemed the whole.

References

State Highway Commission v. Churchwell, 146 M 52, 403 P 2d 751; Thisted v. Country Club Tower Corp., 146 M 87, 405 P 2d 432.

93-401-15. (10519) Construction of statutes and instruments, etc.

References

In re Jones' Estate, 146 M 439, 408 P 2d 482; Wolff v. Standard Life & Accident Ins. Co., — M —, 416 P 2d 11, 17.

93-401-17. (10521) The circumstances to be considered.

References

Close v. Ruegsegger's Estate, 143 M 32, 386 P 2d 739; Thisted v. County Club Tower Corp., 146 M 87, 405 P 2d 432; Ryan v. Ald, Inc., 146 M 299, 406 P 2d 373.

93-401-26. (10530) Affirmative only can be proved.

References

Colarchik v. Watkins, 144 M 17, 393 P 2d 786.

93-401-27. (10531) Facts which may be proved on trial.

References

Cited in Bender v. Bender, 144 M 470, 397 P 2d 957; McReynolds v. McReynolds, — M —, 414 P 2d 531.

CHAPTER 501—EVIDENCE—JUDICIAL NOTICE OF FACTS AND FOREIGN LAWS

93-501-1. (10532) Certain facts of general notoriety assumed to be, etc.

Actual Knowledge

The burden of proof is on the individual litigant, and the courts are not required by the doctrine of judicial notice to inform themselves of facts not within the actual knowledge of the court, nor need the courts take judicial notice of a fact or facts when the party desiring such notice does not request it. Holtz v. Babcock, 143 M 341, 390 P 2d 801.

Succession to Office

The court took notice that upon his death the governor was succeeded as provided by law. Holtz v. Babcock, 143 M 341, 389 P 2d 869.

References

Rambur v. Diehl Lumber Co., 144 M 84, 394 P 2d 745, 749; State v. Peters, 146 M 188, 405 P 2d 642.

CHAPTER 701—EVIDENCE—WITNESSES

93-701-1. (10533) Witness defined.

References

State v. Barick, 143 M 273, 389 P 2d 170.

93-701-2. (10534) All persons capable of perceptions, etc.

Felony Conviction

An accomplice may testify in a criminal case even though he is a convicted felon at the time of his testimony. State v. Barick, 143 M 273, 389 P 2d 170.

93-701-3. (10535) Persons who cannot be witnesses.

References

State v. Barick, 143 M 273, 389 P 2d 170.

93-701-4. (10536) Persons in certain relations cannot be examined.

Criminal Actions

The physician-patient privilege under subsection (4) of this section is not available to a defendant in a criminal action since the provision in section 94-7209 incorporating the civil rules of evidence into the criminal law "except as otherwise provided" pertains to the language of subsection (4) which specifically limits the privilege to civil actions. State v. Campbell, 146 M 251, 405 P 2d 978.

References

State v. Barick, 143 M 273, 389 P 2d 170.

CHAPTER 801—EVIDENCE—UNIFORM BUSINESS RECORDS AS EVIDENCE ACT—UNIFORM PHOTOGRAPHIC COPIES OF BUSINESS AND PUBLIC RECORDS AS EVIDENCE ACT

93-801-1. "Business" defined.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Business Records as Evidence Act: Connecticut, Michigan, and Rhode Island.

93-801-5. Reproductions of originals.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Photographic Copies of Business and Public Records as Evidence Act: Arkansas, Delaware, Michigan, and West Virginia.

CHAPTER 901—EVIDENCE—UNIFORM OFFICIAL REPORTS AS EVIDENCE ACT

93-901-1. Official reports admissible as evidence.

NOTE.—Uniform State Law. Sections 93-901-1 through 93-901-5 constitute the "Uniform Official Reports as Evidence Act" approved by the National Conference of Commissioners on Uniform State Laws in 1936 and adopted in various forms in Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Missouri, Nebraska, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Washington, Wisconsin, Wyoming, and also in the Virgin Islands.

CHAPTER 1001—EVIDENCE—PUBLIC WRITINGS

93-1001-9. (10547) Constitution and statutes.

References

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

93-1001-19. (10557) Copy of a foreign record—when evidence.

References

In re Hosova's Estate, 143 M 75, 387 P 2d 305.

93-1001-30. (10568) Manner of proving other official documents.

References

Holtz v. Babcock, 143 M 341, 390 P 2d 801.

CHAPTER 1301—EVIDENCE—INDIRECT—INFERENCES AND PRESUMPTIONS

93-1301-2. (10601) Inference defined.

Inference Distinguished from Suspicion

An inference is to be distinguished from mere suspicion which is "the act or an instance of suspecting: imagination or apprehension of something wrong or hurtful without proof or on slight evidence" (quoting Webster's New International Dictionary, 3rd ed. 1961). State v. Barick, 143 M 273, 389 P 2d 170.

93-1301-3. (10602) Presumption defined.

References

State v. Barick, 143 M 273, 389 P 2d 170.

93-1301-4. (10603) When an inference arises.

References

State v. Barick, 143 M 273, 389 P 2d 170.

93-1301-6. (10605) Specification of conclusive presumptions.

Estoppel by Own Acts

The doctrine of equitable estoppel set forth in subdivision 3 of this section is not available as a defense when the essential elements of estoppel are lacking. Belhumeur v. Dawson, 229 F Supp 78, 86.

93-1301-7. (10606) All other presumptions may be controverted.

Subdivision 15

Where petitioner claimed, fourteen years after his conviction, that his confession had been coerced and records of the proceedings against him were incomplete, but he had counsel to represent him on a second charge brought against him a few days later, presumption that petitioner had voluntarily waived right to counsel on the first charge, besides the fact that he had pleaded guilty to it so that confession was not used against him, reinforced presumption that the proceedings had not violated his constitutional rights. Frost v. State of Montana, 249 F Supp 349.

Subdivision 17

Where petitioner claimed, fourteen years after his conviction, that his confession had been coerced and records of the proceedings against him were incomplete, fact that defendant had pleaded guilty to the crime charged so that confession was not used, and record stated he had waived right to counsel reinforced presumption under this subdivision that defendant's constitutional rights to counsel and against self-incrimination had not been violated. Frost v. State of Montana, 249 F Supp 349.

Subdivision 24

Presumption under this section that condemnee had received revised contract from state was strengthened by facts that condemnee received other documents enclosed in the same envelope, the envelope was not returned to the state office and the condemnee was well-known in the vicinity. Crissey v. State Highway Commission, — M —, 413 P 2d 308.

References

Subdivision 15: Tooker v. State, — M —, 410 P 2d 923; Wilson v. Brodie, — M —, 419 P 2d 306, 308.

Subdivision 16: Wilson v. Brodie, — M —, 419 P 2d 306, 308.

Subdivision 17: Tooker v. State, — M —, 410 P 2d 923; Wilson v. Brodie, — M —, 419 P 2d 306, 308.

CHAPTER 1401—EVIDENCE—INDISPENSABLE—UNWRITTEN AGREEMENTS—CONCLUSIVE—UNANSWERABLE

93-1401-7. (10613) Agreement not in writing—when invalid.

Note or Memorandum

While the statute of frauds does not require that the memorandum be contained in a single document, where a memorandum did not name the parties to the alleged contract but referred to them as "we" and "our" and also tended to show that further negotiations were intended by the parties, it was not sufficient to satisfy the statute. Anderson v. KFBB Broadcasting Corp., 143 M 423, 391 P 2d 2.

CHAPTER 1501—EVIDENCE—PRODUCTION OF—SUBPOENAS

93-1501-1. (10616) Evidence to be produced, by whom.

Negligence

Where plaintiff's property was damaged by the dropping of fire retardant from airplanes and at the trial he failed to come forth with sufficient evidence to show the lack of due care under the circumstances, the trial court properly nonsuited plaintiff upon defendant's motion. Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

Res Ipsa Loquitur

Res ispa loquitur does not relieve the plaintiff of the burden of proving actionable negligence, nor is it sufficient that he show that he was injured and that the instrumentality which caused his injury

was in the control of the defendant; he must also show that the accident would not have occurred in the ordinary course of events if the defendant had exercised due care. Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

CHAPTER 1901—EVIDENCE—GENERAL RULES OF EXAMINATION

93-1901-6. (10664) When witness may refresh memory from notes.

References

State v. Jones, 143 M 155, 387 P 2d 913.

93-1901-11. (10668) How impeached.

References

State v. Tagge, 143 M 289, 388 P 2d 792; State v. Tully, — M —, 418 P 2d 549, 550.

93-1901-12. (10669) Impeachment by evidence of declarations.

References

State v. Lagge, 143 M 289, 388 P 2d 792.

CHAPTER 2001—EVIDENCE—EFFECT OF

93-2001-1. (10672) Jury judges of effect of evidence, etc.

Subdivision 4—Accomplice's Testimony

Where the court gave a defendant's instruction quoting this section verbatim in a criminal case, it may be assumed that the instruction was considered by the jury in weighing the evidence. State v. Barick, 143 M 273, 389 P 2d 170.

Subdivisions 6 and 7

In action by administrator of estate of deceased partner against surviving partners to recover assets transferred by the deceased during his last illness, evidence that deceased had a half interest in the partnership cattle and failure of defendants to produce any of the partnership records at the trial in the lower court, sustained finding that heir of deceased had overcome the prima facie showing of one-third interest in the partnership cattle arising from the recording of the brand in name of three persons. Marshall v. Minlschmidt, — M —, 419 P 2d 486, 491.

References

State v. Lagge, 143 M 289, 388 P 2d 792; State v. Romero, 146 M 77, 404 P 2d 500.

CHAPTER 2201—EVIDENCE—RULES IN PARTICULAR CASES

93-2201-1. (10680) An offer equivalent to tender.

References

Schultz v. Campbell, — M —, 413 P 2d 879.

93-2201-3. (10682) Objections to tender must be specified.

Waiver of Tender

Ordinarily, a check is not a tender, but it may be as effective as a tender of currency if there is no timely objection to the form of tender, or if the objection is waived. Schultz v. Campbell, — M —, 413 P 2d 879.

CHAPTER 2601—UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

93-2601-1. Short title.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume California, Louisiana, Maryland, Nebraska, Texas, and Washington now have the Uniform Reciprocal Enforcement of Support Act as amended in 1958.

CHAPTER 2701

MONTANA RULES OF CIVIL PROCEDURE

II. COMMENCEMENT OF ACTION—SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

Rule

4. Persons subject to jurisdiction—Process—Service.
   - A. DEFINITION OF PERSON.
   - B. JURISDICTION OF PERSONS.
     - (1) Subject to Jurisdiction.
     - (2) Acquisition of Jurisdiction.
   - C. PROCESS.
     - (1) Summons—Issuance.
     - (2) Summons—Form.
   - D. SERVICE.
     - (1) By Whom Served.
     - (2) Personal Service Within the State.
     - (3) Personal Service Outside the State.
     - (4) Other Service.
     - (5) Service by Publication—When Permitted—Effect—Manner—Proof.
       - (a) When Permitted.
       - (b) Effect of Service by Publication.
       - (c) Filing of Pleading and Affidavit for Service by Publication; and Order for Publication.
       - (d) Number of Publications.
       - (e) Mailing Summons and Complaint.
       - (f) Time When First Publication or Service Outside State Must Be Made.
       - (g) When Service by Publication or Outside State Complete.
       - (h) Additional Information to Be Published.
     - (6) (a) Service on Secretary of State.
       (b) [Continuance to Allow Defense.]
     - (7) Amendment.
     - (8) Proof of Service.
     - (9) Contents of Affidavit of Service.
     - (10) Procedure Where Only Part of Defendants Are Served.

III. PLEADINGS AND MOTIONS

8. General rules of pleading.
   - (b) DEFENSES—FORM OF DENIALS.
   - (c) AFFIRMATIVE DEFENSES.

12. Defenses and objections—When and how presented—By pleading or motion—Motion for judgment on pleadings.
(b) HOW PRESENTED.

V. DEPOSITIONS AND DISCOVERY

33. Interrogatories to parties.

VI. TRIALS

41. Dismissal of actions.
(e) FAILURE TO SERVE SUMMONS.

VII. JUDGMENT

55. Default.
(b) JUDGMENT.
(2) By the Court.
56. Summary judgment.
(c) MOTION AND PROCEEDINGS THEREON.

IX. APPEALS

72. Appeal from a district court to the supreme court.

XI. GENERAL PROVISIONS

86. Effective date—Statutes superseded.
(a) EFFECTIVE DATE AND APPLICATION TO PENDING PROCEEDINGS.
(b) STATUTES SUPERSEDED.

TABLE B. List of rules superseding statutes.
C. List of statutes superseded by rules.

I. SCOPE OF RULES—ONE FORM OF ACTION

Rule 1. Scope of rules.

References

Spaberg v. Johnson, 143 M 500, 392 P 2d 78.

II. COMMENCEMENT OF ACTION—SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

Rule 4. Persons subject to jurisdiction—Process—Service.

Rule 4. Persons subject to jurisdiction—Process—Service.

A. DEFINITION OF PERSON. As used in this rule, the word "person," whether or not a citizen or resident of this state and whether or not organized under the laws of this state, includes an individual whether operating in his own name or under a trade name; an individual's agent or personal representative; a corporation; a business trust; an estate; a trust; a partnership; an unincorporated association; and any two or more persons having a joint or common interest or any other legal or commercial entity.

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment restated this rule without change.

B. JURISDICTION OF PERSONS.

(1) Subject to Jurisdiction. All persons found within the state of Montana are subject to the jurisdiction of the courts of this state. In addition, any person is subject to the jurisdiction of the courts of this state as to any claim for relief arising from the doing personally, through an employee, or through an agent, of any of the following acts:

(a) the transaction of any business within this state;

(b) the commission of any act which results in accrual within this state of a tort action;

(c) the ownership, use or possession of any property, or of any interest therein, situated within this state;

(d) contracting to insure any person, property or risk located within this state at the time of contracting;

(e) entering into a contract for services to be rendered or for materials to be furnished in this state by such person; or

(f) acting as director, manager, trustee, or other officer of any corporation organized under the laws of, or having its principal place of business within this state, or as executor or administrator of any estate within this state.

(2) Acquisition of Jurisdiction. Jurisdiction may be acquired by our courts over any person through service of process as herein provided; or by the voluntary appearance in an action by any person either personally, or through an attorney, or through any other authorized officer, agent or employee.

History: En. Sec. 4, Ch. 13, L. 1951; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment restated this rule without apparent change.

Retroactive Application

The giving effect to the service of summons provisions of this rule, when the operative facts of the case to which the rule was applied had taken place prior to the effective date of the Montana Rules of Civil Procedure as set out in Rule 86 (a) was not a prohibited retroactive application of this rule within the meaning of section 12-201. Weber v. Hydroponics, Inc., 226 F Supp 117, 118.

This rule applied to act of alleged malpractice occurring in Montana prior to effective date of this rule (Rule 86(a)) and doctor who had not resided in Montana since effective date of rule could be served properly with process, under Rule 4D(3), in California. State ex rel. Johnson v. District Court of Fourth Judicial District, — M —, 417 P 2d 109, 111.

Law Review

Ganz, "Doing Business" in Illinois as a Basis of Jurisdiction Over Nonresidents—Due Process and Contracts," Vol. 1, No. 4 Illinois Continuing Legal Education 75 (October 1963).

C. PROCESS.

(1) Summons—Issuance. Upon the filing of the complaint, the clerk shall forthwith issue a summons, and shall deliver the summons either to the sheriff of the county in which the action is filed, or to the person who is to serve it, or upon request, to the attorney for said party who shall thereafter be responsible to see that the summons is served in the manner prescribed by these rules. Upon request, separate or additional summons shall issue against any parties designated in the original action, or against any additional parties who may be brought into the action.

(2) Summons—Form. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names

of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. In an action brought to quiet title to real estate, there shall be added to the foregoing, the following: "This action is brought for the purpose of quieting title to the land situated in ———— County, Montana, and described as follows: (Here insert description of land.)." The provisions of sections 84-4165, R. C. M. 1947 and 93-6228, R. C. M. 1947, as well as the provisions hereinafter prescribed in D(5)(h), must be complied with.

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment made minor changes in the caption to paragraph (2) and in references to R. C. M. 1947.

D. SERVICE.

(1) By Whom Served. Service of all process shall be made by a sheriff of the county where the party to be served is found, by his deputy, by a constable authorized by law, or by any other person over the age of 21 not a party to the action, except that a subpoena may be served as provided in Rule 45.

(2) Personal Service Within the State. The summons and complaint shall be served together, unless two or more defendants are residents of the same county, in which case a copy of the complaint need only be served upon one of such defendants. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(a) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given.

(b) Upon a minor over the age of 14 years, by delivering a copy of the summons and complaint to him personally, and by leaving a copy thereof at his dwelling house or usual place of abode with some adult of suitable discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

(c) Upon a minor under the age of 14 years, by delivering a copy of the summons and complaint to his guardian, if he has one within the state, and if not, then to his father or mother or other person or agency having his care or control, or with whom he resides, or if service cannot be made upon any of them, then as provided by order of the court.

(d) Upon a person who has been adjudged of unsound mind by a court of this state, or for whom a guardian has been appointed in this state by reason of incompetency, by delivering a copy of the

CHAPTER 2701

MONTANA RULES OF CIVIL PROCEDURE

(Amendments effective January 1, 1966)

Note: The amendments to the Montana Rules of Civil Procedure contained herein were adopted by the Supreme Court under the authority of Title 93, Chapter 2801, Revised Codes of Montana, 1947, effective January 1, 1966. These amended Rules should be retained for use with the 1967 Cumulative Pocket Supplement to Volume Seven, Revised Codes of Montana, 1947.

Rule 4. Persons subject to jurisdiction—Process—Service.

D. SERVICE.

(1) * * * [Same as 1967 Supplement.]

(2) Personal Service Within the State. * * * Service shall be made as follows:

(a) to (d) * * * [Same as 1967 Supplement.]

(e) Upon a domestic corporation, partnership or other unincorporated association, or upon a foreign corporation, partnership or other unincorporated association, established by the laws of any other state or country, and having a place of business within this state or doing business herein either permanently or temporarily, or which was doing business herein either permanently, or temporarily at the time the claim for relief accrued: (i) by delivering a copy of the summons and complaint to an officer, director, superintendent or managing or general agent, or partner, or associate for such corporation, partnership, or association; or by leaving such copies at the office or place of business of the corporation, partnership, or association within the state with the person in charge of such office; or (ii) by delivering a copy of the summons and complaint to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, partnership, or association, provided that if the agent or attorney in fact is one designated by statute to receive service, such further notice as the statute requires shall also be given; or (iii) if the sheriff shall make return that no person upon whom service may be made can be found in the county, then service may be made by leaving a copy of the summons and complaint at any office of the corporation, partnership, or unincorporated association within this state with the person in charge of such office; or (iv) if the suit is against a corporation whose charter or right to do business in the state has expired or been forfeited, by delivering a copy thereof to any one of the persons who have become trustees for the corporation and its stockholders or members.

(f) When a claim for relief is pending in any court of this state against a corporation organized under the laws of this state, or against a corporation organized under the laws of any other state or country, that has filed a copy of its charter in the office of the secretary of state of Montana and qualified to do business in Montana; or against a corporation organized under the laws of any other state or country which is subject to the jurisdiction of the courts of this state under the provisions of Rule 4B above, even though such corporation has never qualified to do business in Mon-

tana; or against a national banking corporation which, through insolvency or lapse of charter, has ceased to do business in Montana; and none of the persons designated in D(2)(e) immediately above can with the exercise of reasonable diligence be found within Montana, the party causing summons to be issued shall exercise reasonable diligence to ascertain the last known address of any such person. Upon the filing with the clerk of court in which the claim for relief is pending of an affidavit reciting that none of the persons designated in D(2)(e) can after due diligence be found within Montana upon whom service of process can be made, and reciting the last known address of any such person, or reciting that after the exercise of reasonable diligence no such address for any such person could be found, and there has also been deposited with the said clerk the sum of $5.00 to be paid to the secretary of state as a fee for each of said defendants for whom the secretary of state is to receive said service, then the clerk of court shall issue an order directing process to be served upon the secretary of state of the state of Montana or, in his absence from his office, upon the deputy secretary of state of the state of Montana. Such affidavit shall be sufficient evidence of the diligence of inquiry made by affiant, if the affidavit recites that diligent inquiry was made, and the affidavit need not detail the facts constituting such inquiry. Whenever service is also to be made through publication as provided in 4D(5), or upon other persons as provided in 4D(6), the affidavit herein required may be combined in the same instrument with the affidavit required under 4D(5)(c) and 4D(6). The said clerk of court shall then mail to the secretary of state the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service, to the office of the secretary of state. The secretary of state shall mail copy of the summons and complaint by certified or registered mail with a return receipt requested to the last known address of any of the persons designated in D(2)(e) above, if known, or, if none such is known and it is a corporation not organized in Montana, to the secretary of state of the state in which such corporation was originally incorporated, if known; and the secretary of state shall make his return as hereinafter provided under Rule 4D(6). When service is so made, it shall be deemed personal service on such corporation, and the said secretary of state, or his deputy when the secretary is absent from his office, is hereby appointed agent of such corporation for service of process in cases hereinbefore mentioned. In any action where due diligence has been exercised to locate and serve any of the persons designated in D(2)(e) above, service shall be deemed complete upon said corporation regardless of the receipt of any return receipt or advice of refusal of the addressee to receive the process mailed, as is hereinafter required by 4D(6); provided, however, that except in those actions where any of the persons designated in D(2)(e) above have been located and served personally as hereinabove provided, then service by publication shall also be made as provided hereafter in 4D(5)(d) and 4D(5)(h); the first publication must be made within sixty days from the date the original summons is mailed to the secretary of state as herein provided, and if said first publication is not so made, the action shall be deemed dismissed as to any such party intended to be served by such publication; and service shall be complete upon the date of the last publication of summons.

When service of process is made as herein provided, and there is no appearance thereafter made by any attorney for such corporation,

service of all other notices required by law to be served in such action may be served upon the secretary of state.

(g) and (h) * * * [Same as 1967 Supplement.]

(3) to (10) * * * [Same as 1967 Supplement.]

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966.

Amendment

The amendment of September 7, 1965 deleted "or attorney" in clause (i) of paragraph (e) of subdivision (2), and, in paragraph (f) of subdivision (2) substituted "court of this state" for "court in this state" in the first clause of the first sentence, substituted "subject to the jurisdiction * * * Rule 4B above" for "actually doing business within Montana or was actually doing business in Montana at the time the claim for relief arose," in the second clause of the first sentence, and substituted "persons" for "person" in the fourth sentence.

Commission Note to September 7, 1965 Amendment

The amendments to Rule 4D(2) as to (e) is to remove an "attorney" because of doubt as to who would be such within the meaning of the Rule. As to (f) to avoid possible conflict of the provisions of this subdivision and those of 4B.

The other amendments [Rules 50(b), 52(b), 59(e) and 60(c)] will expedite the hearing and determination of the motions involved, and provide a time after submission within which the motions are deemed denied if the court fails to decide them.

Rule 50. Motion for a directed verdict.

(b) RESERVATION OF DECISION ON MOTION. [First paragraph same as parent volume.]

Motions provided by this subdivision shall be heard and determined within the times provided by Section 93-5606 of the 1947 Revised Codes of Montana in the case of motions for new trial.

History: En. Sec. 50, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966.

Amendment

The September 7, 1965 amendment added the second paragraph.

Rule 52. Findings by the court.

(b) AMENDMENT. Upon motion of a party made not later than 10 days after service of notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59.

Motions provided by this subdivision shall be heard and determined within the times provided by Section 93-5606 of the 1947 Revised Codes of Montana in the case of motions for new trial.

History: En. Sec. 52, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Aug. 1, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966.

Amendments

The amendment of August 1, 1965 inserted "service of notice of" before "entry" in the first paragraph.

The amendment of September 7, 1965 added the second paragraph.

Commission Note to August 1, 1965 Amendment

Under Rule 77(d) the prevailing party has 10 days after the entry of judgment to give the unsuccessful parties notice of such entry. The change in 52(b) is an adjustment to this provision, and is designed to meet the possibility that the prevailing party is the only party that knows of the entry of the judgment and waits 10 days before giving the unsuccessful party notice of such entry. The provision is similar to that found in Rule 59(b) and (e).

Rule 59. New trials—Amendment of judgments.

(e) MOTION TO ALTER OR AMEND A JUDGMENT. A motion to alter or amend the judgment shall be served not later than 10 days after service of notice of entry of the judgment.

Motions provided by this subdivision shall be heard and determined within the times provided by Section 93-5606 of the 1947 Revised Codes of Montana in the case of motions for new trial.

History: En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966.

Amendment

The amendment of September 7, 1965 added the second paragraph.

Rule 60. Relief from judgment or order.

(b) MISTAKES — INADVERTENCE — EXCUSABLE NEGLECT—NEWLY DISCOVERED EVIDENCE—FRAUD, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) within 60 days when a defendant has been personally served, whether in lieu of publication or not, calculated from the date of service of notice of entry of the judgment or order or action taken in the proceeding. When from any cause the summons in an action has not been personally served on the defendant, the court may allow, on such terms as may be just, such defendant or his legal representative, at any time within 180 days after the rendition of any judgment in such action, to answer to the merits of the original action. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as may be provided by law, or to set aside a judgment for fraud upon the court.

History: En. Sec. 60, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Aug. 1, 1965, eff. Jan. 1, 1966.

Amendment

The amendment of August 1, 1965 substituted "within 60 days * * * in the proceeding" for "not more than one year after the judgment, order or proceeding was entered or taken" in the second sentence and inserted the third sentence.

Commission Note to August 1, 1965 Amendment

The purpose of this amendment is to make the Montana practice correspond to practice under the last sentence of R. C. M. 1947, § 93-3905 (which was repealed with the adoption of the Rules of Civil Procedure), as construed in Smith v. Collis, 42 Mont. 350, 365-370 (1910). The time within which the motion may be made is shortened, but considered adequate.

(c) TIME FOR HEARING AND DETERMINING MOTIONS. Motions provided by subdivisions (a) and (b) of this rule shall be heard and determined within the times provided by Section 93-5606 of the 1947 Revised Codes of Montana in the case of motions for new trial.

History: En. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966.

summons and complaint to his guardian, if there be a guardian residing in this state appointed and acting under the laws of this state. If there be no such guardian, the court shall appoint a guardian ad litem for the incompetent person, with or without personal service on the incompetent, as the court may direct. When a party is alleged to be of unsound mind, but has not been so adjudged by a court of this state, such party may be brought into court by service of process personally upon him. The court may also stay any action pending against a person on learning that such person is of unsound mind.

(e) Upon a domestic corporation, partnership or other unincorporated association, or upon a foreign corporation, partnership or other unincorporated association, established by the laws of any other state or country, and having a place of business within this state or doing business herein either permanently or temporarily, or which was doing business herein either permanently, or temporarily at the time the claim for relief accrued: (i) by delivering a copy of the summons and complaint to an officer, director, superintendent or managing or general agent, or partner, or associate, or attorney for such corporation, partnership, or association; or by leaving such copies at the office or place of business of the corporation, partnership, or association within the state with the person in charge of such office; or (ii) by delivering a copy of the summons and complaint to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, partnership, or association, provided that if the agent or attorney in fact is one designated by statute to receive service, such further notice as the statute requires shall also be given; or (iii), if the sheriff shall make return that no person upon whom service may be made can be found in the county, then service may be made by leaving a copy of the summons and complaint at any office of the corporation, partnership, or unincorporated association within this state with the person in charge of such office; or (iv), if the suit is against a corporation whose charter or right to do business in the state has expired or been forfeited, by delivering a copy thereof to any one of the persons who have become trustees for the corporation and its stockholders or members.

(f) When a claim for relief is pending in any court in this state against a corporation organized under the laws of this state, or against a corporation organized under the laws of any other state or country, that has filed a copy of its charter in the office of the secretary of state of Montana and qualified to do business in Montana; or against a corporation organized under the laws of any other state or country which is actually doing business within Montana or was actually doing business in Montana at the time the claim for relief arose, even though such corporation has never qualified to do business in Montana; or against a national banking corporation which, through insolvency or lapse of charter, has ceased to do business in Montana; and none of the persons designated in D(2)(e) immediately above can with the exercise of reasonable diligence be found within Montana, the party causing summons to be issued shall exercise reasonable

diligence to ascertain the last known address of any such person. Upon the filing with the clerk of court in which the claim for relief is pending of an affidavit reciting that none of the persons designated in D(2)(e) can after due diligence be found within Montana upon whom service of process can be made, and reciting the last known address of any such person, or reciting that after the exercise of reasonable diligence no such address for any such person could be found, and there has also been deposited with the said clerk the sum of $5.00 to be paid to the secretary of state as a fee for each of said defendants for whom the secretary of state is to receive said service, then the clerk of court shall issue an order directing process to be served upon the secretary of state of the state of Montana, or, in his absence from his office, upon the deputy secretary of state of the state of Montana. Such affidavit shall be sufficient evidence of the diligence of inquiry made by affiant, if the affidavit recites that diligent inquiry was made, and the affidavit need not detail the facts constituting such inquiry. Whenever service is also to be made through publication as provided in 4D(5), or upon other person as provided in 4D(6), the affidavit herein required may be combined in the same instrument with the affidavit required under 4D(5)(c) and 4D(6). The said clerk of court shall then mail to the secretary of state the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service, to the office of the secretary of state. The secretary of state shall mail copy of the summons and complaint by certified or registered mail with a return receipt requested to the last known address of any of the persons designated in D(2)(e) above, if known, or, if none such is known and it is a corporation not organized in Montana, to the secretary of state of the state in which such corporation was originally incorporated, if known; and the secretary of state shall make his return as hereinafter provided under Rule 4D(6). When service is so made, it shall be deemed personal service on such corporation, and the said secretary of state, or his deputy when the secretary is absent from his office, is hereby appointed agent of such corporation for service of process in cases hereinbefore mentioned. In any action where due diligence has been exercised to locate and serve any of the persons designated in D(2)(e) above, service shall be deemed complete upon said corporation regardless of the receipt of any return receipt or advice of refusal of the addressee to receive the process mailed, as is hereinafter required by 4D(6); provided, however, that except in those actions where any of the persons designated in D(2)(e) above have been located and served personally as hereinabove provided, then service by publication shall also be made as provided hereafter in 4D(5)(d) and 4D(5)(h); the first publication must be made within sixty days from the date the original summons is mailed to the secretary of state as herein provided, and if said first publication is not so made, the action shall be deemed dismissed as to any such

party intended to be served by such publication; and service shall be complete upon the date of the last publication of summons.

When service of process is made as herein provided, and there is no appearance thereafter made by any attorney for such corporation, service of all other notices required by law to be served in such action may be served upon the secretary of state.

(g) Upon a city, village, town, school district, county, or public agency or board of any such public bodies, by delivering a copy of the summons and complaint to any commissioner, trustee, board member, mayor or head of the legislative department thereof.

(h) Upon the state, or any state board or state agency, by delivering a copy of the summons and complaint to the governor, or to any member of such state board or state agency, and also by delivering an additional copy of the summons and complaint to the attorney general.

(3) Personal Service Outside the State. Where service upon any person cannot, with due diligence, be made personally within this state, service of summons and complaint may be made by service outside this state in the manner provided for service within this state, with the same force and effect as though service had been made within this state. Where service of summons by publication is permitted as hereinafter provided, personal service of the summons and complaint upon the defendant out of the state, made after the filing of the required complaint and required affidavit for publication, shall be equivalent to, and shall have the same force and effect as, the publication and mailing provided for hereafter in 4(5)(d) and 4(5)(e) of this rule.

(4) Other Service. All process in any form of action shall be served in the manner specified in this rule with the exception that whenever a statute of this state or an order of the court or a citation by the court made pursuant thereto provides for the service of a notice or of an order or of a citation in lieu of summons upon any person, service shall be made under the circumstances and in the manner prescribed by the statute or order or citation; and with the further exception that all persons are required to comply with the provisions of sections 40-2819, 40-3405, 40-3406, 40-3423, 40-3424, 93-6229, 93-6230, and 93-6232, R. C. M. 1947, when the action pertains to the provisions of such sections.

(5) Service by Publication — When Permitted — Effect — Manner — Proof.

(a) When Permitted. A defendant, whether known or unknown, who has not been served under the foregoing subsections of this rule can be served by publication in the following situations only:

(i) When the subject of the action is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest therein. This subsection shall apply whether any such defendant is known or unknown.

(ii) When the action is to foreclose, redeem from or satisfy a mortgage, claim or lien upon real or personal property within this state.

(iii) When the action is for divorce or for annulment of marriage of a resident of this state or for modification of a decree of divorce granted by a court of this state.

(iv) When the defendant has property within this state which has been attached or has a debtor within this state, who has been garnished. Jurisdiction under this subsection may be independent of or supplementary to jurisdiction acquired under subsections (5)(a)(i), (5)(a)(ii), and (5)(a)(iii) herein.

(b) Effect of Service by Publication. When a defendant, whether known or unknown, has been served by publication as provided in this rule, any court of this state having jurisdiction may render a decree which will adjudicate any interest of such defendant in the status, property, or thing acted upon, but it may not bind the defendant personally to the personal jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(c) Filing of Pleading and Affidavit for Service by Publication; and Order for Publication. Before service of the summons by publication is authorized in any case, there shall be filed with the clerk in the district court of the county in which the action is commenced (i) a pleading setting forth a claim in favor of the plaintiff and against the defendant in one of the situations defined in (5)(a) above; and (ii) in situations defined in (5)(a)(i), (5)(a)(ii), (5)(a)(iii), upon return of the summons showing the failure to find any defendant designated in the complaint, an affidavit stating that such defendant resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons; or, if the defendant is a domestic or foreign corporation, that none of the persons designated in D(2)(e) above can, after due diligence, be found within the state; or, if the defendant is an unknown claimant, by showing that he has made diligent search and inquiry for all persons who claim, or might claim any right, title, estate, or interest in, or lien, or encumbrance upon, such property, or any thereof, adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any right of dower, inchoate or accrued, and that he has specifically named as defendants in such action all such persons whose names can be ascertained; such affidavit shall be sufficient evidence of the diligence of any inquiry made by the affiant, if the affidavit recite the fact that diligent inquiry was made, and it need not detail the facts constituting such inquiry, and if desired, it may be combined in one instrument with the affidavit required under 4D(2)(f), or 4D(6); and (iii) in the situation defined in (5)(a)(iv) above, there must be first presented to the court proof that a valid attachment or garnishment has been effected. Upon complying herewith the plaintiff may obtain an order for the service of summons to be made upon the defendants by publication, which order may be issued by either the judge or the clerk of court.

(d) Number of Publications. Service of the summons by publication may be made by publishing the same three times, once each

week for three successive weeks, in a newspaper published in the county in which the action is pending, if a newspaper is published in such county, and if no newspaper is published in such county then in a newspaper published in an adjoining county and having a general circulation therein.

(e) Mailing Summons and Complaint. A copy of the summons for publication and complaint, at any time after the filing of the affidavit for publication and not later than 10 days after the first publication of the summons, shall be deposited in some post office in this state, postage prepaid, and directed to the defendant at his place of residence unless the affidavit for publication states that the residence of the defendant is unknown. If the defendant is a corporation, and personal service cannot with due diligence be effected within Montana on any of the persons designated in D(2)(e) above, then service may be completed on said corporation by service upon the secretary of state in the manner, and following the procedure outlined in D(2)(f) above.

(f) Time When First Publication or Service Outside State Must Be Made. The first publication of summons, or personal service of the summons and complaint upon the defendant out of the state, must be made within 60 days after the filing of the affidavit for publication. If not so made, the action shall be deemed dismissed as to any party intended to be served by such publication.

(g) When Service by Publication or Outside State Complete. Service by publication is complete on the date of the last publication of the summons, or in case of personal service of the summons and complaint upon the defendant out of the state, on the date of such service.

(h) Additional Information to Be Published. In addition to the form of summons prescribed above in "C. Process, (2) Summons —Form," the published summons shall state in general terms the nature of the action, and in all cases where publication of summons is made in an action in which the title to, or any interest in or lien upon real property is involved, or affected, or brought into question, the publication shall also contain a description of the real property involved, affected or brought into question thereby, and a statement of the object of the action.

(6) (a) Service on Secretary of State. Whenever service is to be made upon certain corporations as provided hereinabove in D(2)(f) and D(5)(e), the requirements of said D(2)(f) must be complied with. In all other cases, unless otherwise provided by statute, whenever the secretary of state of the state of Montana has been appointed, or is deemed by law to have been appointed, as the agent to receive service of process for any person who cannot with due diligence be found or served personally within Montana, the party, or his attorney, shall make an affidavit stating the facts showing that the secretary of state is such agent, and stating the residence and last known post-office address of the person to be served, and shall file

such affidavit with the clerk of court in which such claim for relief is pending, accompanied by sufficient copies of the affidavit, summons and complaint for service upon the secretary of state, and there has also been deposited with the clerk of the court in which such claim for relief is pending the sum of five dollars to be paid to the secretary of state as a fee for each of said defendants for whom the secretary of state is to receive such service; then the clerk shall forward the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, and one copy of the summons attached to copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee, to the office of the secretary of state.

Such service on the secretary of state shall be sufficient personal service upon the person to be served, provided that notice of such service and a copy of the summons and complaint are forthwith sent by registered or certified mail by the secretary of state or his deputy to the party to be served at his last known address, marked "Deliver to Addressee Only" and "Return Receipt Requested," and provided further that such return receipt shall be received by the secretary of state purporting to have been signed by said addressee, or the secretary of state shall be advised by the postal authority that delivery of said registered or certified mail was refused by said addressee, except in those cases where compliance is excused under the provisions of D(2)(f) above. The date upon which the secretary of state receives said return receipt, or receives advice by the postal authority that delivery of said registered or certified mail was refused by the addressee, shall be deemed the date of service.

As an alternative to sending the summons and complaint by registered or certified mail, as herein provided, the secretary of state, or his deputy, may cause copy of the summons and complaint to be served by any qualified law enforcement officer, in accord with the procedure set out in D(1), (2) or (3) of this rule.

The secretary of state, or his deputy, shall make an original and two copies of an affidavit reciting: (1) the fact of service upon him by the clerk of court, including the day, and hour of such service; (2) the fact of his mailing a copy of the summons and complaint and notice to the defendant, including the day and hour thereof, except in those cases where he is relieved from doing so under the provisions of D(2)(f) in which cases his affidavit shall so recite; and (3) the fact of his receipt of a return from the postal department including the date, and hour thereof, and attaching to his affidavit a copy of such return. The secretary of state, or his deputy, shall then transmit the original summons, and his original affidavit along with copy of his notice to the defendant where such notice was required, to the clerk of court in which the claim for relief is pending, and it shall be filed in the claim for relief by said clerk of court; and the secretary of state shall also transmit to the attorney for the plaintiff copy of the affidavit of the secretary of state along with copy of the notice to the defendant where such notice was required. The secretary

of state shall keep on file in his office a copy of the summons, a copy of the affidavit served on him by the clerk of court, and a copy of the affidavit executed and issued by the secretary of state.

(b) [Continuance to Allow Defense.] In any of the cases provided for in Rule 4D(2)(f) above, or provided for hereinabove in 4D(6)(a), the court in which the claim for relief is pending may order such continuance as may be necessary to afford reasonable opportunity to defend the action.

(7) Amendment. At any time, in its discretion, and upon such notice and terms as it deems just, the court may allow any process or proof of service thereof to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(8) Proof of Service. Proof of the service of the summons and of the complaint or notice, if any, accompanying the same must be as follows:

(a) If served by the sheriff or other officer, his certificate thereof;

(b) If by any other person, his affidavit thereof;

(c) In case of publication an affidavit of the publisher and an affidavit of the deposit of a copy of the summons and complaint in the post office as required by law, if the same shall have been deposited; or

(d) The written admission of the defendant showing the time and place of service.

The certificate or affidavit of service mentioned in this subdivision must state the time, date, place, and manner of service.

(9) Contents of Affidavit of Service. Whenever a process, pleading, order of court, or other paper is served personally by a person other than the sheriff or person designated by law, the affidavit of service when made, shall state that the person so serving is of legal age, and the date and place of making the service. It also shall state that the person making such service knew the person served to be the person named in the papers served and the person intended to be served.

(10) Procedure Where Only Part of Defendants Are Served. If the summons is served on one or more, but not all, of the defendants, the plaintiff may proceed to trial and judgment against the defendant or defendants on whom the process is served, and may at any time thereafter have a summons against the defendant not served with the first process to cause him to appear in said court to show cause why he should not be made a party to such judgment. Upon such defendant being duly served with such process, the court shall hear and determine the matter in the same manner as if such defendant had been originally brought into court, and such defendant shall also be allowed the benefit of any payment or satisfaction which may have been made on the judgment before recovered.

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment rewrote paragraphs (e) and (f) of subdivision (2), for previous text of which see parent

volume; substituted "if the defendant is a domestic or foreign corporation, that none of the persons designated in D(2)(e) above can" for "that the defendant, if a domestic or foreign corporation, has no agent for the service of process, nor managing nor business agent, cashier, secretary, or other officer who can" in clause (ii) of paragraph (5)(c); inserted "and if desired, it may be combined in one instrument with the affidavit required under 4 D(2)(f), or 4 D(6)" at the end of clause (ii) of paragraph (5)(c); substituted the second sentence of paragraph (5)(e) for two sentences applying only to foreign corporations, for text of which see parent volume; substituted "any party intended to be served by such publication" for "any person not served within said 60-day period" at the end of paragraph (5)(f); completely rewrote subdivision (6), for previous text of which see parent volume; inserted "by" in clause (8)(b); and made minor style changes in paragraphs (3), (4), and (5)(a)(iv).

Commission Note to 1965 Amendment

Because of criticism from several members of the Bar, as well as the office of the Secretary of State, changes have been made in the provisions of Rule 4. In addition, some housekeeping changes have also been made.

We have inserted at the points where changes or additions have been made the new language italicized [not italicized herein; see Amendment note above].

Several members of the Bar have called the attention of the Rules Committee to the fact that particularly in quiet title actions, where defunct corporations were involved, and where none of the persons could be found with due diligence upon whom service could be completed that would be binding on the defunct corporation, that effective service could not be obtained by reason of the requirement of a return of a registered receipt showing delivery of the summons and complaint to the defunct corporation. We have now corrected that defect. In doing so, we have also brought within the framework of Rule 4 the provisions of R. C. M. 1947, Sections 93-3008, 93-3011, and 93-3012, which will be superseded. In addition, as long as we are changing Rule 4, we have now specified and delineated the same persons to be served whether or not the defendants are domestic or foreign corporations, or domestic or foreign partnerships or other unincorporated associations. It will be recalled that when Rule 4 was first promulgated, and in an effort not to bring about any changes in our prior practice, the old, separate, segregated statutes pertaining to domestic and foreign corporations were segregated in Rule 4. There is no reason, however, why the same persons should not be delineated for both domestic and foreign corporations, and we have now done so in this new writing of Rule 4.

In lieu of the requirement of a return receipt signed on behalf of the corporations, which in many instances cannot be accomplished, as pointed out in the criticism from the Bar, we have now added a requirement for publication of summons against such corporation where none of the persons can be found with due diligence upon whom personal service can be completed. (See the new D(2)(f). In so providing, however, we have now spelled out that the same procedure for publications shall be followed for serving corporations personally in in personam actions, as we have provided for serving such corporations by publication in in rem actions (see D(5)(e)).

Accordingly, we have made an effort to combine and streamline service on corporations by designating the same individual persons who can be served, whether the corporations are domestic or foreign, and providing the same procedure of publication where such persons cannot be found with due diligence, whether or not the defendants are domestic and foreign, and we have eliminated the necessity of the return of a signed registry receipt objected to so heavily by the Bar.

A second important change in the rule is specific authorization for an attorney for the plaintiff to incorporate within the framework of one single affidavit all the material necessary for serving defunct corporations personally, for serving by way of publication, and for serving the secretary of state.

Changes have also been made in those portions of the rule providing for service on the secretary of state. We have eliminated the necessity of the intermediate step of having summons and complaint go through the hands of the sheriff in Lewis and Clark County; we have cut down on the papers that must be kept on file by the secretary of state, particularly eliminating the necessity of his keeping a copy of the complaint; and we have provided a requirement that the secretary of state shall now serve upon the attorney for the plaintiff the factual information showing what was done by the secretary of state in effecting service, and the date when it was accomplished.

There are other minor housekeeping changes in the rule, and wherever there is any change, omission, alteration, or new language, reference to it is contained at the points where such is accomplished.

Retroactive Application

Rule 4B(1), applied to act of alleged

malpractice occurring in Montana prior to the effective date of this rule (Rule 86(a)) and doctor who had not resided in Montana since effective date of rule could properly be served with process in California under this rule. State ex rel. Johnson v. District Court of Fourth Judicial District, — M —, 417 P 2d 109, 111.

DECISIONS UNDER FORMER LAW

Paragraph (2)

The doctrine of ostensible agency under section 2-205 has no application in determining whether service of process has been legally made on a "managing or general agent" within the meaning of this rule. Kraus v. Treasure Belt Min. Co., 146 M 432, 408 P 2d 151.

Where defendant-mine was no longer operating, and the person upon whom service was made was receiving unemployment compensation, did not have a key nor access to the mine premises, and told the sheriff who made the service he was no longer connected with the mining corporation, there was no "apparent authority" under which that person could be served as "managing or general agent" of defendant. Kraus v. Treasure Belt Min. Co., 146 M 432, 408 P 2d 151.

Paragraph (5)

Where personal service was had upon husband in Canada, this precluded further service by publication of summons, so that a second decree, based on the service by publication, was null. Sowerwine v. Sowerwine, 145 M 81, 339 P 2d 233.

Husband, who went to Canada and was personally served there in divorce action, had forty days in which to answer under the combined time allotted in former Rules 4(D)(5)(g) and 12(a), M. R. Civ. P., and default taken before that time was voidable. Sowerwine v. Sowerwine, 145 M 81, 399 P 2d 233.

Jurisdiction of the court attaches at the time of personal service of the complaint and summons, so that a prematurely entered default judgment is voidable and not void. Sowerwine v. Sowerwine, 145 M 81, 399 P 2d 233.

Paragraph (8)

Appearance and waiver executed by a foreign corporation, not qualified to do business in Montana, acknowledging receipt of amended complaint filed by plaintiff sufficiently complied with former section 93-3018. Greene Plumbing & Heating Co. v. Morris, 144 M 234, 395 P 2d 252, 255.

Rule 6. Time.

(a) COMPUTATION.

References

Williams v. Superior Homes, Inc., — M —, 417 P 2d 92, 94.

III. PLEADINGS AND MOTIONS

Rule 8. General rules of pleading.
12. Defenses and objections—When and how presented—By pleading or motion —Motion for judgment on pleadings.

Rule 7. Pleadings allowed—Form of motions.

(a) PLEADINGS.

Reply

A plaintiff is not required to reply to an answer where not specifically ordered to do so by the court, nor is it mandatory to reply to an affirmative defense of a release, since under Rule 8(d), where no responsive pleading is required, the averment is deemed denied. Wheat v. Safeway Stores, Inc., 146 M 105, 404 P 2d 317.

References

Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1.

(c) DEMURRERS, PLEAS, ETC., ABOLISHED.

References

Payne v. Mountain States Telephone and Telegraph Co., 142 M 406, 385 P 2d 100.

Rule 8. General rules of pleading.

(a) CLAIMS FOR RELIEF.

Separate Claims on Note and Mortgage

Upon default in an action against the unconditional guarantors of a note and to foreclose mortgage securing the note, the holder of the note may properly proceed at its option against either security in the same action. Bozeman Deaconess Foundation v. Cowgill, 143 M 98, 387 P 2d 435.

References

Hidden Hollow Ranch v. Collins, 146 M 321, 406 P 2d 365; Williams v. Superior Homes, Inc., — M —, 417 P 2d 92, 93.

(b) DEFENSES—FORM OF DENIALS. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

History: En. Sec. 8, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

Amendment

The 1964 amendment substituted "or" for "of" after "only a part" in the fourth sentence.

(c) AFFIRMATIVE DEFENSES. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

History: En. Sec. 8, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

Amendment

The 1964 amendment substituted "affirmatively" for "affirmative" after "shall set forth" in the first sentence.

Res Judicata

Where supreme court affirmed dismissal of complaint by trial court on ground that complaint was unverified as required by section 93-3702 and on additional ground that complaint failed to state a claim upon which relief could be granted and a week later plaintiff filed a second verified amended complaint which eliminated confusion, the issue of res judicata was not so clear that the supreme court on the second appeal could say that the trial court could have found the defense of res judicata available without an answer under Rule 8(c) or responsive pleading to present the record of the former judgment plus a statement to show why it should be treated as res judicata. Rambur v. Diehl Lumber Co., 144 M 84, 394 P 2d 745, 748.

References

Interstate Mfg. Co. v. Interstate Products Co., 146 M 449, 408 P 2d 478.

(d) EFFECT OF FAILURE TO DENY.

Reply

The stipulation in this rule that averments in answer to which no responsive pleading is required are denied, read in conjunction with Rule 7(a), does not compel the plaintiff to reply to an answer averring the affirmative defense of a release. Wheat v. Safeway Stores, Inc., 146 M 105, 404 P 2d 317.

Rule 9. Pleading special matters.

(b) FRAUD, MISTAKE, CONDITION OF THE MIND.

References

Brooks v. Brooks Pontiac, Inc., 143 M 256, 389 P 2d 185.

(c) CONDITIONS PRECEDENT.

References

Interstate Mfg. Co. v. Interstate Products Co., 146 M 449, 408 P 2d 478.

Rule 11. Signing of pleadings.

Lack of Verification

Where a complaint was prepared to conform to this rule but lacked verification, and defendant waited until after he received an adverse judgment to raise the issue in a motion to dismiss on appeal, such motion failed as his proper remedy would have been a motion to strike under Rule 12. Adams v. Davis, 142 M 587, 386 P 2d 574.

Rule 12. Defenses and objections—When and how presented—By pleading or motion—Motion for judgment on pleadings.

(a) WHEN PRESENTED.

DECISIONS UNDER FORMER LAW

Default Taken Prematurely

Husband who went to Canada and was personally served there in divorce action had forty days in which to answer under the combined time allotted in former Rules 4(D)(5)(g) and 12(a), M. R. Civ. P., and default taken before that time was voidable. Sowerwine v. Sowerwine, 145 M 81, 399 P 2d 233.

Jurisdiction

Jurisdiction of the court attaches at the time of personal service of the complaint and summons, so that a prematurely entered default judgment is voidable and not void. Sowerwine v. Sowerwine, 145 M 81, 399 P 2d 233.

(b) HOW PRESENTED. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert

at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(i) The cases in which place of trial may be changed are specified in section 93-2906, R. C. M. 1947.

(ii) If the county designated in the complaint is not the proper county for trial of the action, the defendant must at the time of his first appearance request by motion that the trial be had in the proper county. Every defense in law or fact, to a claim for relief in any pleading which defendant desires to present by way of motion as hereinabove provided must be joined with, or inserted in, the motion requesting a change in the place of trial. If the court in which the action is commenced grants the request for change of venue, that court shall not consider nor pass upon other defenses in law, or fact, presented by the motion, but such shall be considered and decided by the court sitting in the proper county after the transfer has been completed. No request for change of venue is waived by being joined in a motion with other defenses or objections in law or fact.

(iii) Any request for change in place of trial for grounds 2 and 3 of section 93-2906, R. C. M. 1947, must be presented by motion within 20 days after the answer to the complaint, or to the cross-claim where a cross-claim is filed, or the reply to any answer, in those cases in which a reply is authorized, has been filed; except that whenever at some time more than twenty days after the last pleading has been filed an event occurs which thereafter affords good cause to believe that an impartial trial cannot be had under ground 2 of said section 93-2906, and competent proof is submitted to the court that such cause of impartiality did not exist within the twenty-day period after the last pleading was filed, then the court may entertain a motion to change the place of trial under ground 2 of section 93-2906 within twenty days after that later event occurs.

(iv) With respect to ground 4 of section 93-2906, R. C. M. 1947, the party who disqualifies a district judge, and who desires a change of venue, must include such request in a motion filed along with the affidavit of disqualification. If the party who does not disqualify the district judge desires a change of venue, he shall make such request by motion within 5 days after being served with a copy of the affidavit of disqualification. Unless the parties have agreed in writing upon another district judge, or upon a member of the bar as judge pro tempore, the disqualified district judge must either call in another district judge within fifteen days after filing of the affidavit of disqualification, or ten days after filing of the motion for change of venue, or, if no other judge is called in, grant the motion for change of venue. If any other qualified district judge shall be called in, as herein provided, and shall, within thirty days after the motion for change of venue has been filed, appear and assume jurisdiction of the cause and of all matters and proceedings therein, no change of the place of trial shall be made. If the other qualified district judge called in, as herein provided, fails

to appear and assume jurisdiction within thirty days after the motion for change of venue has been filed, then the disqualified judge must immediately grant the motion and order a change in the place of trial to some other county.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment renumbered some of the numbered clauses in the first sentence and added subdivisions (i) to (iv). See Commission Note below.

Commission Note to 1965 Amendment

The numbering of the defenses which may be made by motion is changed to conform to that of the Federal Rule, which results in there being no "(3)" because "improper venue" as a ground for motion to dismiss was deleted in 1963. Subdivisions (i), (ii), (iii), and (iv) are added to clarify and detail the time and manner for motions for change of place of trial in the cases specified in Section 93-2906, R. C. M. 1947.

Involuntary Dismissal

Rule 41(b), providing for involuntary dismissal which operates as an adjudication upon the merits, has no application to a motion to dismiss for failure to state a claim under this rule. Rambur v. Diehl Lumber Co., 144 M 84, 394 P 2d 745, 750.

Motion to Dismiss

A motion to dismiss under this rule is equivalent to a demurrer under former procedure. Payne v. Mountain States Telephone and Telegraph Co., 142 M 406, 385 P 2d 100; Holtz v. Babcock, 143 M 341, 389 P 2d 869; Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1.

While a motion to dismiss for failure to state a claim on which relief can be granted is the same as a demurrer under former Montana procedure and therefore admits to all facts well pleaded, it does not admit to controversial conclusions of law or to the accuracy of alleged construction of written instruments set forth in the pleading. Holtz v. Babcock, 143 M 341, 389 P 2d 869.

An order sustaining a motion to dismiss is not appealable. Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1.

A motion to dismiss was proper under this rule where return was made more than three years after commencement of action in violation of Rule 41(e), and lack of jurisdiction did not have to be pleaded as an affirmative defense. Whitcraft v. Semenza, 145 M 97, 399 P 2d 757.

Res Judicata

Where supreme court affirmed lower court judgment dismissing complaint for failure to state a claim upon which relief could be granted under this rule, the judgment was not res judicata as to a second amended complaint under the provisions of Rule 56(c) treating motion as a summary judgment where matters outside the pleadings were presented to and not excluded by the court. Rambur v. Diehl Lumber Co., 144 M 84, 394 P 2d 745, 749.

(c) MOTION FOR JUDGMENT ON THE PLEADINGS.

References

Steffes v. Crawford, 143 M 43, 386 P 2d 842.

Rule 13. Counterclaim and cross-claim.

(g) CROSS-CLAIM AGAINST COPARTY.

DECISIONS UNDER FORMER LAW

Parties to Cross-claim

District court did not have jurisdiction and power to adjudicate mechanics' liens of cross-complainants, materialmen, where they failed to serve the principal contractor with process. Greene Plumbing & Heating Co. v. Morris, 144 M 234, 395 P 2d 252, 256.

Rule 14. Third-party practice.

(a) WHEN DEFENDANT MAY BRING IN THIRD PARTY.

Insurance Coverage

Federal court dismissed action for declaratory judgment declaring obligations of casualty insurance company under an automobile casualty insurance policy which had allegedly been canceled prior to the time of the accident involving the automobile of the insured sued for in-

juries resulting from the accident, since the issues which did not involve federal law, could be solved in the state court wherein third-party complaint under this rule had been filed by the insured against the insurer in which the insured sought to hold the insurer to the terms of the policy, where the state court could dispose of the coverage problems first under M. R. Civ. P., Rule 42(b). Western Casualty & Surety Co. v. Pinson, 255 F Supp 624, 625.

References

Wheat v. Safeway Stores, Inc., 146 M 105, 404 P 2d 317.

Rule 15. Amended and supplemental pleadings.

(a) AMENDMENTS.

Discretionary Power of Court

Where it was very clear that the supreme court, upon a former appeal of the same case, was unanimous in its decision to affirm the jury verdict and as to the ineffectiveness of additur order, the fact that the supreme court affirmed the jury verdict and thereby finally determined the amount of the award withdrew any discretion that might have been otherwise possessed by the trial judge to allow amendments to the pleadings. State acting by and through State Highway Commission v. Schmidt, — M —, 420 P 2d 153, 155.

Trial court's discretionary power to grant leave to amend pleadings may be limited by a decision of the supreme court upon a former appeal of the same case. State acting by and through State Highway Commission v. Schmidt, — M —, 420 P 2d 153, 155.

Right to Amendment of Course

The motion to dismiss for failure to state a claim is not a responsive pleading within the provisions of this rule that complaint may be amended once as a matter of course before a responsive pleading is served. Rambur v. Diehl Lumber Co., 144 M 84, 394 P 2d 745, 748.

(d) SUPPLEMENTAL PLEADINGS.

Notice

Trial court was justified in refusing to grant defendants' motion to amend their answer by adding an affirmative defense of compromise and settlement, even though it was represented that some sort of compromise settlement had been reached after filing of complaint and answer, since defendants had not given plaintiffs notice of this motion as required by this section. Montgomery v. Gehring, 145 M 278, 400 P 2d 403.

IV. PARTIES

Rule 17. Parties plaintiff and defendant—Capacity.

(a) REAL PARTY IN INTEREST.

References

State ex rel. Farmers Elevator Co. of Reserve v. District Court, — M —, 410 P 2d 160.

Rule 18. Joinder of claims and remedies.

(a) JOINDER OF CLAIMS.

Divorce Action

Where wife brought suit for divorce and husband filed cross complaint for adjudication of his right to property acquired by their joint effort, the general equity powers of the court were properly invoked by joining in a single action the prayer for divorce and adjudication of the dispute between the parties concerning property rights. Tolson v. Tolson, 145 M 87, 399 P 2d 754.

DECISIONS UNDER FORMER LAW

Assignor Bringing Action

Assignee of one-half interest of an overriding royalty agreement with plaintiff-assignor and defendant could not be joined as a party plaintiff in a suit to compel defendant to pay the other half interest to plaintiff whether assignor was a trustee for the assignee or they were tenants in common. Lowe & Lynn v. Flank Oil Co., 144 M 499, 398 P 2d 608.

Rule 20. Permissive joinder of parties.

(a) PERMISSIVE JOINDER.

Scope

The scope of this rule is procedural in nature and removes obstacles to joinder without affecting the substantive rights of the parties, so that in a suit by real estate agents against buyer and seller, judgment for plaintiff would not, in effect, make the buyer a party to a prior contract between the agents and the seller. Wheat v. Safeway Stores, Inc., 146 M 105, 404 P 2d 317.

(b) SEPARATE TRIALS.

References

Wheat v. Safeway Stores, Inc., 146 M 317, 404 P 2d 317.

Rule 21. Misjoinder and nonjoinder of parties.

References

Wheat v. Safeway Stores, Inc., 146 M 105, 404 P 2d 317.

V. DEPOSITIONS AND DISCOVERY

Rule 33. Interrogatories to parties.

Rule 26. Depositions pending action.

(b) SCOPE OF EXAMINATION.

References

State ex rel. State Highway Commission v. District Court, — M —, 412 P 2d 832.

Rule 30. Depositions upon oral examination.

(b) ORDERS FOR THE PROTECTION OF PARTIES AND DEPONENTS.

Limitation of Examination

In a libel action it was not error for the trial judge to issue a minute entry order refusing to require the defendant to answer questions submitted by the plaintiff as the court has the power to limit the examination and protect him from annoyance, embarrassment or oppression. Steffes v. Crawford, 143 M 43, 386 P 2d 842.

References

State ex rel. State Highway Commission v. District Court, — M —, 412 P 2d 832.

Rule 33. Interrogatories to parties.

Any party may serve upon any adverse party, who has been served with process or who has appeared, written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. The interrogatories shall be answered separately and fully in writing under oath. The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within 20 days after the service of interrogatories, unless the court, on motion and notice and for good cause shown, enlarges or shortens the time. Within 20 days after service of interrogatories a party may serve written objections thereto together with a notice of hearing the objections at the earliest practicable time. Answers to interrogatories to which objection is made shall be deferred until the objections are determined.

Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the same extent as

provided in Rule 26(d) for the use of the deposition of a party. Interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered, but the court, on motion of the deponent or the party interrogated, may make such protective order as justice may require. The number of interrogatories or of sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment, or oppression. The provisions of Rule 30(b) are applicable for the protection of the party from whom answers to interrogatories are sought under this rule.

A party desiring to serve interrogatories upon an adverse party shall file and serve a copy thereof upon every other party. The party answering the interrogatories shall file the answers in the court in which the action is pending and serve a copy thereof upon every other party.

History: En. Sec. 33, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment added the third paragraph.

Commission Note to 1965 Amendment

This amendment is consistent with Rule 5. The requirement of service of interrogatories and answers upon all other parties to the litigation may save other parties additional time and effort in duplication of interrogatories resultant from lack of knowledge of what other parties have done. The requirement of filing of answers makes them available to judges who may want to see them.

Scope

Although this section should be liberally construed to make all relevant facts available to parties in advance of trial and to reduce the possibilities of surprise and unfair advantage, it cannot become a weapon for punishment or forfeiture, or an instrument for the avoidance of a trial on the merits. Wolfe v. Northern Pacific Ry. Co., — M —, 409 P 2d 528.

Rule 34. Discovery and production of documents and things, etc.

Inspection of Land

State's motion for inspection to drill two wells on condemnee's property to show that other water could be obtained should have been allowed to determine issue of whether there was irreparable damage to condemnee's adjoining land, especially where condemnee had already been partially recompensed for the condemnation, the inspection went to the essential issue of damages and state offered to put up bond to cover any damage from the drilling. State ex rel. State Highway Commission v. District Court, — M —, 412 P 2d 832.

Rule 36. Admission of facts and of genuineness of documents.

(a) REQUEST FOR ADMISSION.

Construction

The intent of this rule is that the party served shall make a sworn statement of the truth of any relevant matters of fact set forth in the request for admissions. Daniels v. Paddock, 145 M 207, 399 P 2d 740.

Discretion of Trial Court

Where defendant failed to file admissions on plaintiff's request and was not permitted to file them later or to reopen hearing on summary judgment, whether defendant's admissions, which were signed and verified by defendant's counsel as being made from a letter received from the defendant, met the intent of this rule was a matter within the discretion of the trial court. Daniels v. Paddock, 145 M 207, 399 P 2d 740.

Failure To Answer

In suit by client against his attorney for money which attorney failed to forward to client, request for admissions were deemed admitted where attorney failed to answer. Daniels v. Paddock, 145 M 207, 399 P 2d 740.

References

Olson v. City Commission of City of Helena, 146 M 386, 407 P 2d 374.

Rule 37. Refusal to make discovery—Consequences.

(a) REFUSAL TO ANSWER.

Appellate Review

An appellate court will reverse a trial court judge, who has refused to invoke the sanctions of this section, only when his judgment may materially affect the substantial rights of the parties and allow a possible miscarriage of justice. Wolfe v. Northern Pacific Ry. Co., — M —, 409 P 2d 528.

Judge's Discretion

It was not an abuse of discretion for trial judge to allow witness for oil refinery to testify as to condition of ground about railroad tracks where plaintiff-switchman crushed his hand beneath wheel of oil tank car when he allegedly slipped in oil or grease on concrete walkway of refinery in trying to mount the train, even though railroad had not included witness' name in its answer to plaintiff's interrogatories, since witness was the oil refinery's and plaintiff, knowing oil refinery had been joined as a third-party defendant, had failed to seek disclosure from it, or a pretrial conference, and had allowed other witnesses to testify to the same matter at trial. Wolfe v. Northern Pacific Ry. Co., — M —, 409 P 2d 528.

VI. TRIALS

Rule 41. Dismissal of actions.

Rule 38. Jury trial of right.

(a) RIGHT RESERVED.

Declaratory Judgment

A party has a right to a jury trial on demand where the suit is for a declaratory judgment and there are triable issues of fact. Mahan v. Hardland, — M —, 410 P 2d 156.

Rule 39. Trial by jury or by the court.

(c) ADVISORY JURY AND TRIAL BY CONSENT.

New Trial

In an equity action for specific performance tried before an advisory jury, where the court granted defendant's motion for a new trial, the court was not required to order that the new trial be by jury as had the original proceedings. Waite v. Waite, 143 M 248, 389 P 2d 181.

Rule 41. Dismissal of actions.

(a) VOLUNTARY DISMISSAL—EFFECT THEREOF.

References

Vennes v. Nollmeyer, 144 M 43, 394 P 2d 178.

(b) INVOLUNTARY DISMISSAL—EFFECT THEREOF.

Failure to State a Claim

This rule has no application to a motion to dismiss for failure to state a claim under Rule 12(b). Rambur v. Diehl Lumber Co., 144 M 84, 394 P 2d 745, 750.

References

Whitcraft v. Semenza, 145 M 97, 399 P 2d 757.

DECISIONS UNDER FORMER LAW

Insufficient Evidence

Where plaintiff's property was damaged by the dropping of fire retardant from airplanes and at the trial he failed to show the lack of proper care under the circumstances, the trial court properly nonsuited plaintiff upon defendant's motion. Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

No cause should be withdrawn from the jury unless evidence is susceptible of but one construction by reasonable men and that in favor of the defendant, or the evidence is in such condition that if the jury returned a verdict in favor of the plaintiff, it would be the court's duty to set it aside. Jackson v. William Dingwall Co., 145 M 127, 399 P 2d 236.

Trial court properly granted directed verdict for defendant, employer and ranch foreman, where plaintiff, a ranch hand, was injured while riding atop a bobsled loaded with hay, since plaintiff failed to make out a prima facie case that tipping of bobsled was due to negligence. Jackson v. William Dingwall Co., 145 M 127, 399 P 2d 236.

(e) FAILURE TO SERVE SUMMONS. No action heretofore or hereafter commenced shall be further prosecuted as to any defendant who has not appeared in the action or been served in the action as herein provided within three years after the action has been commenced, and no further proceedings shall be had therein, and all actions heretofore or hereafter commenced shall be dismissed by the court in which the same shall have been commenced, on its own motion, or on the motion of any party interested therein, whether named in the complaint as a party or not, unless summons shall have been issued within one year, or unless summons issued within one year shall have been served and return made and filed with the clerk of the court within three years after the commencement of said action, or unless appearance has been made by the defendant or defendants therein within said three years. When more than one defendant has been named in an action, the action may within the discretion of the trial court be further prosecuted against any defendant who has appeared within three years, or upon whom summons which has been issued within one year has been served and return made and filed with the clerk within three years as herein required.

History: En. Sec. 1, Ch. 111, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment inserted "as to any defendant who has not appeared in the action or been served in the action as herein provided within three years after the action has been commenced" in the first part of the first sentence; substituted "unless summons shall have been issued within one year, or unless summons issued within one year shall have been served and return made and filed with the clerk of the court" for "summons shall have been served and return made" in the latter part of the first sentence; and added the second sentence.

Commission Note to 1965 Amendment

This clarifies and brings together the laches provisions with respect to issuance and service of summons. At present Rules 4 C(1), 41(e), Section 93-3002, R. C. M. 1947, and Rule 12(b) all need to be referred to. This amendment incorporates the laches provision of Section 93-4705 (7), R. C. M. 1947, which was repealed by Chapter 13 of the 1961 Session Laws.

This amendment renders Section 93-3002, R. C. M. 1947, unnecessary, and that section superseded and added to Tables B and C.

How Raised

Where return was made more than three years after commencement of action, this subsection, since it is not a statute of limitations, could be raised by motion under Rule 12(b), rather than pleaded as an affirmative defense. Whitcraft v. Semenza, 145 M 97, 399 P 2d 757.

Pending Actions

Even though there was a lapse of a year between repeal of former section 93-4705, R. C. M. 1947, and adoption of this rule, which is identical, application of this rule to a pending action in which return was made more than three years after commencement of the action was proper, since not only was a reasonable time allowed before the effective date of the change, but the information was widely distributed. Whitcraft v. Semenza, 145 M 97, 399 P 2d 757.

Renewal of Claim

A judgment is not res judicata unless it is on the merits, so that a dismissal under this rule, since it is not a statute of limitations, does not constitute a bar to another suit on the same claim. Whitcraft v. Semenza, 145 M 97, 399 P 2d 757.

DECISIONS UNDER FORMER LAW

Quashing Summons

District court exceeded its jurisdiction in denying motion to quash summons and dismiss action where the summons had

not been served and returned within the three years required by this rule prior to 1965 amendment. State ex rel. Belwin, Inc. v. Davison, — M —, 420 P 2d 842, 844.

Rule 42. Consolidation—Separate trials.

(b) SEPARATE TRIALS.

Insurance Coverage

Federal court dismissed action for declaratory judgment declaring obligations of casualty insurance company under an automobile insurance policy, which allegedly had been canceled prior to the time of the accident involving the automobile of the insured who was being sued for injuries resulting from the accident in the state court, since the issues, which did not involve federal law, could be solved in the state court wherein third-party complaint under M. R. Civ. P., Rule 14(a), had been filed by the insured against the insurer in which insured sought to hold the insurer to the terms of the policy, where state court could dispose of the coverage problem first under this rule. Western Casualty & Surety Co. v. Pinson, 255 F Supp 624, 625.

Permissive Joinder

Since this section allows for separate trials, practically, it seems desirable to give the broadest possible reading to the permissive language of Rule 20. Wheat v. Safeway Stores, Inc., 146 M 105, 404 P 2d 317.

References

Bozeman Deaconess Foundation v. Cowgill, 143 M 98, 387 P 2d 435.

Rule 43. Evidence.

(b) SCOPE OF EXAMINATION AND CROSS-EXAMINATION.

Plaintiff Called as Defense Witness

Where plaintiff appeared as her own only witness and was not cross-examined by the defendant who then called her as a defense witness, the defense was bound by her testimony even though it came after the plaintiff herself had rested her case. Close v. Ruegsegger's Estate, 143 M 32, 386 P 2d 739.

(e) EVIDENCE ON MOTIONS.

Summary Judgments

Oral testimony may be heard on motions for summary judgment. Daniels v. Paddock, 145 M 207, 399 P 2d 740.

Rule 51. Instructions to jury—Objection.

Refusal to Give Instructions

Denial of offered instructions which were adaptable to defendant's theory of the case was prejudicial error where such denial deprived him of a possible defense of assumption of risk. Wollan v. Lord, 142 M 498, 385 P 2d 102, distinguished in 145 M 486, 488, 402 P 2d 41.

It is not error for the trial judge to refuse to give specific instruction where the subject in question has been adequately covered by other instructions. Holland v. Konda, 142 M 536, 385 P 2d 272.

Rule 52. Findings by the court.

(a) EFFECT.

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698; Tolson v. Tolson, 145 M 87, 399 P 2d 754.

(b) AMENDMENT.

Amendment of Findings and Judgment

A motion to alter, amend, and supplement findings of fact, conclusions of law and the judgment combined with a motion for a new trial, filed on September 28, 1965, was a motion contemplated by this rule and Rule 59(e) and was not governed by the time limits of section 93-5606. State ex rel. Rozan v. District Court of Sixteenth Judicial District, — M —, 416 P 2d 19, 21.

References

Sztaba v. Great Northern Ry. Co., — M —, 411 P 2d 379.

VII. JUDGMENT

Rule 55. Default.
56. Summary judgment.

Rule 54. Judgments—Costs.

(b) JUDGMENT UPON MULTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIES.

Separate Claims on Note and Mortgage

Upon default in an action against the unconditional guarantors of a note and to foreclose mortgage securing the note, the holder of the note could properly proceed at its option against either security in the same action. Bozeman Deaconess Foundation v. Cowgill, 143 M 98, 387 P 2d 435.

References

State ex rel. Kober and Kyriss v. District Court, — M —, 410 P 2d 945.

(c) DEMAND FOR JUDGMENT.

Divorce Proceedings

Where proper notice of hearing on application for judgment of divorce was given defendant in accordance with M. R. Civ. P., Rule 55(b) and no relief different from that demanded in the complaint was granted in violation of this rule, an appeal on those grounds was dismissed by supreme court upon its own motion where no application to set aside default or judgment was made under Rule 60(b). Sowerwine v. Sowerwine, — M —, 418 P 2d 859, 861.

Rule 55. Default.

(b) JUDGMENT. Judgment by default may be entered as follows:

(1). * * * [Same as parent volume.]

(2) By the Court. In all other cases the party entitled to a judgment be default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative, or guardian ad litem, who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the state of Montana.

History: En. Sec. 55, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

Amendment

The 1964 amendment inserted "an" before "account" in the final sentence of paragraph (2).

Clerk's Error

Entry of default judgment by clerk of court without requiring affidavit from plaintiff of amount due and owing rendered the judgment voidable but not void. Interstate Counseling Service v. Emeline, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

Motion to set aside default judgment because of plaintiff's failure to file affidavit of amount due and owing when it requested entry of default judgment was properly denied where defendant permitted judgment to be satisfied from her property, and no reason to avoid the voidable judgment had been presented. Interstate Counseling Service v. Emeline, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

Under Rule 61 omission of clerk of

court to require affidavit of amount due under this rule before entry of default judgment in favor of plaintiff is not fatal unless refusal to take action with respect to the omission appears to the court inconsistent with substantial justice. Interstate Counseling Service v. Emeline, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

Divorce Proceedings

Where proper notice of hearing on application for judgment of divorce was given defendant in accordance with this rule and no relief different from that demanded in the complaint was granted in violation of M. R. Civ. P., Rule 54(c), an appeal on those grounds was dismissed by the supreme court on its own motion where no application to set aside the default or judgment was made under Rule 60(b). Sowerwine v. Sowerwine, — M —, 418 P 2d 859, 861.

Ministerial Function

Clerk of court in entering a default judgment is performing a ministerial function and must follow procedures in detail and absolutely. Interstate Counseling Service v. Emeline, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

Nonprejudicial Error

Where record showed that defendant took no action for nearly three months after default judgment had been entered, defendant was not prejudiced by plaintiff's failure to give written notice of application for default judgment as required by paragraph (2) of this rule and district court did not abuse its discretion in denying defendant's motion to vacate the default judgment filed under M. R. Civ. P., Rule 55(c). Williams v. Superior Homes, Inc., — M —, 417 P 2d 92, 94.

(c) DEFAULT — SETTING ASIDE — EXTENSION OF TIME, ETC.

Discretion of Court

Where record showed that defendant took no action for nearly three months after default judgment had been entered, defendant was not prejudiced by plaintiff's failure to give written notice of application for default judgment as required by M. R. Civ. P., Rule 55(b)(2), and district court did not abuse its discretion in denying defendant's motion to vacate the default judgment filed under this rule. Williams v. Superior Homes, Inc., — M —, 417 P 2d 92, 94.

Voidable Judgments

A default judgment entered prematurely pursuant to this section could not be set aside under M. R. Civ. P., Rule 60(b)(4), since Rule 60(b)(4) applies to void and not voidable judgments. Sowerwine v. Sowerwine, 145 M 81, 399 P 2d 233.

References

Kraus v. Treasure Belt Min. Co., 146 M 432, 408 P 2d 151.

DECISIONS UNDER FORMER LAW

Terms of Opening of Default

Fact that corporate defendant claimed sheriff had never served summons upon the corporation, sheriff did not remember service of the summons, and default was not taken until seven years after the plaintiff was injured constituted clear, unequivocal and convincing proof to rebut weight accorded sheriff's return of service of process under section 16-2707 to open default judgment. Sewell v. Beatrice Foods Co., 145 M 337, 400 P 2d 892.

Rule 56. Summary judgment.

(b) FOR DEFENDING PARTY.

Denial of Motion

In suit by guardians of patient for personal injuries sustained when patient was being X-rayed, district court erred in granting defendant-hospital's motion for summary judgment where there was an issue of fact as to whether radiologist was an independent contractor rather than an agent of the hospital. Kober v. Stewart, — M —, 417 P 2d 476, 479.

References

Silloway v. Jorgenson, 146 M 307, 406 P 2d 167.

(c) MOTION AND PROCEEDINGS THEREON. The motion shall be served at least 10 days before the time fixed for the hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled

to a judgment as a matter of law. Affidavits shall not be considered for any purpose on motion for summary judgment. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

History: En. Sec. 56, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment inserted "answers to interrogatories" in the first sentence.

Commission Note to 1965 Amendment

The amendment expressly includes "answers to interrogatories" among material which may be considered on motion for summary judgment. This conforms to an amendment to the Federal Rule adopted January 21, 1963, the Federal Rule having inadvertently omitted the phrase. The courts have generally reached by interpretation the result required by the amendment.

Burden of Proof

The moving party for a summary judgment has the burden of showing the absence of any genuine factual issue. Kober v. Stewart, — M —, 417 P 2d 476, 478.

Matters Considered

In case in which plaintiff's deposition alone was sufficient to permit the trial judge to determine that the case contained no issue of material fact or controversy relating to the testatrix's incompetency, the trial court was correct in granting summary judgment and had no duty to anticipate possible proof that might have been offered under the pleadings. Silloway v. Jorgenson, 146 M 307, 406 P 2d 167.

While this rule does not mention oral testimony as material to be used at the summary judgment hearing, Rule 43(e) permits the use of oral testimony upon motions, so that oral testimony may be considered upon a motion for summary judgment. Daniels v. Paddock, 145 M 207, 399 P 2d 740.

Pleadings Not Controlling

On a motion for summary judgment the formal issues presented by the pleadings are not controlling and the court must consider the depositions, answers to interrogatories, and admissions on file, oral testimony and exhibits presented. Hager v. Tandy, 146 M 531, 410 P 2d 447.

Purpose

The general purpose of this rule is to dispose promptly of actions in which there is no genuine issue of fact, thereby eliminating unnecessary trial, delay, and expense. Silloway v. Jorgenson, 146 M 307, 406 P 2d 167.

Res Judicata

Where supreme court affirmed lower court judgment dismissing complaint for failure to state a claim upon which relief could be granted under Rule 12(b), the judgment was not res judicata as to a second amended complaint under this section where matters outside the pleadings were presented to and not excluded by court. Rambur v. Diehl Lumber Co., 144 M 84, 394 P 2d 745, 749.

References

Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

Rule 57. Declaratory judgments.

References

Harrer v. Northern Pacific Ry. Co., — M —, 410 P 2d 713; Empire Fire & Marine Ins. Co. v. Goodman, — M —, 412 P 2d 569.

Rule 59. New trials—Amendment of judgments.

(a) GROUNDS.

Appellate Review

In condemnation proceeding, where state appraised land at $18,000, condemnee appraised it at $95,000 and jury awarded condemnee $21,000, granting of new trial because award was inadequate was not such an abuse of trial judge's discretion as to warrant reversal in spite of the fact there was no rebuttal of state's only expert witness. State Highway Commission v. Greenfield, 145 M 164, 399 P 2d 989.

Jury Misconduct

New trial was properly granted where foreman of jury made his own investigation at the scene of the accident after hearing testimony and informed the other members of jury, during their deliberation, of the results of his investigation. The foreman was guilty of misconduct upon which verdict could be impeached by affidavits of jurors. Goff v. Kinzle, — M —, 417 P 2d 105, 107.

DECISIONS UNDER FORMER LAW

Right To Appeal

Defendant was entitled to appeal, in spite of time limitation of section 93-5606 for filing bill of exceptions where motion for new trial was combined with motion to amend findings and request for review of facts, conclusions of law and judgment, since limitation under section 93-5606 did not apply prior to enactment of new rules of civil procedure. Crissey v. State Highway Commission, — M —, 413 P 2d 308.

(b) TIME FOR MOTION.

References

Clark v. Worrall, 146 M 374, 406 P 2d 822.

(d) ON INITIATIVE OF COURT.

Appellate Review

The appellate court may not disturb the findings of the trial court in ordering a new trial without a showing of abuse of discretion. Campeau v. Lewis, 144 M 543, 398 P 2d 960.

Disqualification of Judge

Section 93-901 does not permit disqualification of a judge pending motion for a new trial under this rule. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Judge's Discretion

The jury is delegated the task of finding the facts, but the trial judge has the discretion to prevent a miscarriage of justice by granting a new trial if there is an insufficiency of evidence to support the verdict. Campeau v. Lewis, 144 M 543, 398 P 2d 960.

Purpose of Rule

The purpose of this rule is to give a trial judge power to prevent what he considers a miscarriage of justice. Campeau v. Lewis, 144 M 543, 398 P 2d 960.

Scope

This rule permits the trial judge to order a new trial on his own initiative for the same reasons one could be ordered pursuant to section 93-5603 and is subject to the same interpretations as expressed in previous opinions on motions for new trials before adoption of the rule. Campeau v. Lewis, 144 M 543, 398 P 2d 960.

References

Waite v. Waite, 143 M 248, 389 P 2d 181; State ex rel. Wilson v. District Court, 143 M 543, 393 P 2d 39.

(e) MOTION TO ALTER OR AMEND A JUDGMENT.

Additur

This rule did not give the district court power to order an additur to a condemnation award as a condition of denying motion for new trial. State Highway Commission v. Schmidt, 143 M 505, 391 P 2d 692.

Time Limit

A motion to alter, amend, and supplement findings of fact, conclusions of law and the judgment, combined with a motion for a new trial filed on September 28, 1965 was a motion contemplated by this rule and Rule 52(b) and was not governed by the time limits of section 93-5606. State ex rel. Rozan v. District Court of Sixteenth Judicial District, — M —, 416 P 2d 19, 21.

Rule 60. Relief from judgment or order.

(b) MISTAKES—INADVERTENCE—EXCUSABLE NEGLECT —NEWLY DISCOVERED EVIDENCE—FRAUD, ETC.

Discretion of Court

Where record showed that defendant took no action for nearly three months after default judgment had been entered, defendant was not prejudiced by plaintiff's failure to give written notice of application for default judgment as required by M. R. Civ. P., Rule 55(b)(2), and district court did not abuse its discretion in denying defendant's motion to vacate the default judgment under M. R. Civ. P., Rule 55(c). Williams v. Superior Homes, Inc., — M —, 417 P 2d 92, 94.

Excusable Neglect

Defendant's contention that "personal problems drove all thought of lesser problems from his mind" was not sufficient to

set aside a default judgment under subsection 1 of this section. Dudley v. Stiles, 142 M 566, 386 P 2d 342.

Voidable Judgment

This rule does not apply to voidable judgments. Interstate Counseling Service v. Emeline, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

This rule has no application to prematurely entered default judgments since it applies to void and not voidable judgments. Sowerwine v. Sowerwine, 145 M 81, 399 P 2d 233.

Waiver of Right to Relief

Where proper notice of hearing on application for judgment of divorce was given defendant in accordance with M. R. Civ. P., Rule 55(b) and no relief different from that demanded in the complaint was granted in violation of Rule 54(c), an appeal on those grounds was dismissed by the supreme court on its own motion where no application to set aside the default or judgment was made under this rule. Sowerwine v. Sowerwine, — M —, 418 P 2d 859, 861.

References

Kraus v. Treasure Belt Min. Co., 146 M 432, 408 P 2d 151; Wolfe v. Northern Pacific Ry. Co., — M —, 409 P 2d 528.

Rule 61. Harmless error.

Clerk's Error

Omission of clerk of court to require affidavit of amount due under Rule 55(b) (1) before entry of default judgment in favor of plaintiff is not fatal unless refusal to take action with respect to the omission appears to the court inconsistent with substantial justice. Interstate Counseling Service v. Emeline, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

References

Steffes v. Crawford, 143 M 43, 386 P 2d 842.

Rule 62. Stay of proceedings to enforce a judgment.

(a) Superseded—M. R. App. Civ. P., Rule 7.

Supersession

This section (Sec. 62, Ch. 13, L. 1961), relating to stay of proceedings upon entry of judgment, is superseded by M. R. App. Civ. P., Rule 7.

(d) Superseded—M. R. App. Civ. P., Rule 7.

Supersession

This section (Sec. 62, Ch. 13, L. 1961), relating to stay of proceedings upon appeal, is superseded by M. R. App. Civ. P., Rule 7.

(e) STAY IN FAVOR OF THE STATE OF MONTANA OR AGENCY THEREOF.

Eminent Domain Proceeding

Where state highway commission filed notice of appeal and perfected their appeal after writ of execution under section 93-9918 had issued, the appeal stayed the judgment although no bond was filed as required by section 93-8011, since under this rule no security was required from the state. Robertson v. State Highway Commission, — M —, 420 P 2d 21, 24.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 65. Injunctions.

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

IX. APPEALS

Rules 72. Appeal from a district court to the supreme court.

Rule 72. Appeal from a district court to the supreme court.

When an appeal is permitted by law from a district court to the

supreme court of Montana, or in any case where original proceedings are commenced in the supreme court, such appeal or original proceeding shall be taken, perfected, and prosecuted pursuant to the provisions of the Montana Rules of Appellate Civil Procedure and controlling statutes to the extent that they are not superseded by the Montana Rules of Appellate Civil Procedure.

History: En. Sec. 71, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966.

Advisory Committee's Note

Subdivision (a) of Rule 41, M. R. App. Civ. P. merely adapts the Montana Rules of Civil Procedure to these Appellate Rules.

Amendments

The 1965 amendment rewrote this section. For previous text, see parent volume.

XI. GENERAL PROVISIONS

Rule 86. Effective date—Statutes superseded.

Rule 81. Applicability in general.

(a) SPECIAL STATUTORY PROCEEDINGS.

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

(b) APPEALS TO DISTRICT COURTS.

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

(c) RULES INCORPORATED INTO STATUTES.

References

Steffes v. Crawford, 143 M 43, 386 P 2d 842.

Rule 86. Effective date—Statutes superseded.

(a) EFFECTIVE DATE AND APPLICATION TO PENDING PROCEEDINGS. These Rules became effective January 1, 1962. In accordance with Chapter 16, Laws of 1963, proposed amendments to these rules shall be first prepared by the advisory committee, which shall distribute copies thereof to the bench and resident bar of the state for their consideration and suggestions. Submission of proposed amendments to the court shall be made by the advisory committee only after the advisory committee has considered suggestions received from the bench and bar. Submissions to the court shall be noticed by the court by mailing notice, containing copies of the submitted proposals to all district judges and resident attorneys licensed to practice in the Montana courts as shown by the records of the clerk of the court, and the court will receive written suggestions and objections within the time fixed in the notice, which shall be not less than ninety (90) days thereafter. Oral hearings on proposals will be held only on special order of the court. Amendments adopted by the court will become effective on January 1 unless a different time be fixed in the order.

The court will annually, at least thirty (30) days prior to January 1, cause to be published all amendments to these rules which are to become effective on the succeeding January 1, and transmit the same to all judges and resident lawyers of the state. Such rules as are to become effective at times other than January 1 will be published and transmitted at least thirty (30) days prior to their effective date. These rules and amendments govern all proceedings and actions brought after they take effect, and also all further proceedings in actions then pending, except to the extent that in the opinion of the district court their application in a particular action pending when the rules or amendments take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the action was brought applies.

History: En. Sec. 79, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

Amendment

The 1964 amendment divided subdivision (a) into two paragraphs; inserted the second, third, fourth, fifth, and sixth sentences of the first paragraph and the first and second sentences of the second paragraph; substituted "These rules and amendments" for "They" at the beginning of the third sentence of the second paragraph; inserted "or amendments" after "particular action pending when the rules" in the latter part of the third sentence of the second paragraph; and substituted "became effective" for "will take effect" in the first sentence of the first paragraph.

Retroactive Application

The giving effect to the service of summons provisions of Montana Rules of Civil Procedure, Rule 4, subd. B, when the operative facts of the case to which the rule applied had taken place prior to the effective date provided in this section, was not a prohibited retroactive application of Rule 4, subd. B, within the meaning of section 12-201. Weber v. Hydroponics, Inc., 226 F Supp 117, 118.

Rule 4B(1), M. R. Civ. P., applied to act of alleged malpractice occurring in Montana prior to effective date of the Montana Rules of Civil Procedure and doctor who had not resided in Montana since the effective date of the rules could properly be served with process, under Rule 4D(3), in California. State ex rel. Johnson v. District Court of Fourth Judicial District, — M —, 417 P 2d 109, 111.

District court had the power to consider motion under procedure that was in effect when the motion was filed where the court believed application of amended rule would work an injury. State ex rel. Rozan v. District Court of Sixteenth Judicial District, — M —, 416 P 2d 19, 21.

References

Steffes v. Crawford, 143 M 43, 386 P 2d 842.

(b) STATUTES SUPERSEDED. Upon the taking effect of these rules or amendments thereto all statutes and parts of statutes in conflict therewith and the statutes listed in Tables B and C are superseded in respect of practice and procedure in the district courts.

History: En. Sec. 79, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

Amendment

The 1964 amendment inserted "or amendments thereto" after "these rules"; and made another minor change in phraseology.

Table B. List of Rules Superseding Statutes.

Rule	Statutes Superseded (R. C. M. 1947, sections)
4D	16-809, 93-3008, 93-3011, 93-3012
41(e)	93-3002

History: En. Sec. 82, Ch. 13, L. 1961; amd. Sec. 3, Ch. 14, L. 1963; amd. Sec. 2, Ch. 190, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment added sections 16-809, 93-3008, 93-3011, and 93-3012 to the list of sections superseded by Rule 4 D; and added section 93-3002 to the list of sections superseded by Rule 41(e).

Table C. List of Statutes Superseded by Rules.

Statutes Superseded (R. C. M. 1947, sections)	Rules
93-3002	41(e)
93-3008	4D
93-3011	4D
93-3012	4D
16-809	4D

History: En. Sec. 83, Ch. 13, L. 1961; amd. Sec. 4, Ch. 14, L. 1963; amd. Sec. 3, ch. 190, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment added sections 16-809, 93-3002, 93-3008, 93-3011, and 93-3012 to the table.

CHAPTER 2901—SUPPORT OF CHILDREN BORN OUT OF WEDLOCK

93-2901-1. Obligations of the father.

NOTE.—Uniform State Law. Sections 93-2901-1 to 93-2901-11 constitute the "Uniform Act on Paternity" approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1960 and adopted in substance in Kentucky and Mississippi.

CHAPTER 3001

MONTANA RULES OF APPELLATE CIVIL PROCEDURE

I. APPLICABILITY OF RULES

Rule

1. Scope of rules—From what judgment or order an appeal may be taken.
2. What the court may review on an appeal from a judgment.
3. Suspension of the rules.

II. APPEALS FROM JUDGMENTS AND ORDERS OF DISTRICT COURTS

4. How taken.
   - (a) FILING THE NOTICE OF APPEAL.
   - (b) JOINT APPEALS.
   - (c) CONTENT OF THE NOTICE OF APPEAL.
   - (d) SERVICE OF NOTICE OF APPEAL.
5. Time for filing notice of appeal.
6. Undertaking for costs on appeal.
   - (a) [FORM OF UNDERTAKING—TIME FOR FILING.]
7. Stay of judgment or order pending appeal.
   - (a) [STAY UPON ENTRY OF JUDGMENT—UNDERTAKING.]
   - (b) [SALE OF PERISHABLE PROPERTY.]
   - (c) [CASES IN WHICH STAY OF PROCEEDINGS NOT ALLOWED.]
8. Sureties and their justification.
   - (a) [LIABILITY OF SURETY—ENFORCEMENT.]
   - (b) [JUSTIFICATION OF SURETIES.]
9. The record on appeal.
   - (a) COMPOSITION OF THE RECORD ON APPEAL.
   - (b) THE TRANSCRIPT OF PROCEEDINGS—DUTY OF APPELLANT TO ORDER—NOTICE TO RESPONDENT IF PARTIAL TRANSCRIPT IS ORDERED—COSTS OF PRODUCING.
   - (c) STATEMENT OF THE EVIDENCE OR PROCEEDINGS WHEN NO REPORT WAS MADE OR WHEN THE TRANSCRIPT IS UNAVAILABLE.
   - (d) AGREED STATEMENT AS THE RECORD ON APPEAL.
   - (e) CORRECTION OR MODIFICATION OF THE RECORD.
10. Transmission of the record.
   - (a) TIME FOR TRANSMISSION—NUMBER OF COPIES OF TRANSCRIPT—DUTY OF APPELLANT.

Rule
(b) DUTY OF CLERK TO TRANSMIT THE RECORD.
(c) EXTENSION OF TIME FOR TRANSMISSION OF THE RECORD—REDUCTION OF TIME.
(d) RETENTION OF THE RECORD IN THE DISTRICT COURT BY ORDER OF COURT.
(e) STIPULATION OF PARTIES THAT PARTS OF THE RECORD BE RETAINED IN THE DISTRICT COURT.
(f) RECORD FOR PRELIMINARY HEARING IN THE SUPREME COURT.

11. Docketing the appeal—Filing of the record.
(a) DOCKETING THE APPEAL.
(b) FILING OF THE RECORD.
(c) DISMISSAL FOR FAILURE OF APPELLANT TO CAUSE TIMELY TRANSMISSION OR TO DOCKET APPEAL.

12. Effect of dismissal.

13. Acts of executors, administrators or guardians valid when appointment vacated.

14. Ruling against respondent may be reviewed.

15. Remedial powers of the supreme court.

16. Remittitur must be certified to the clerk of the district court.

III. ORIGINAL PROCEEDINGS—EXTRAORDINARY WRITS

17. Acceptance and manner of conducting.
(a) WHEN ACCEPTED.
(b) HOW COMMENCED AND CONDUCTED.
(c) APPLICATIONS—WHEN FILED.
(d) APPLICATIONS—WHAT TO CONTAIN.
(e) APPLICATIONS—HOW AND WHEN PRESENTED.
(f) ISSUANCE OF ALTERNATIVE WRIT OR ORDER TO SHOW CAUSE.
(g) BRIEFS.
(h) HEARING—WHEN HAD.

IV. APPEALS IN FORMA PAUPERIS

18. Applications and manner of proceeding.
(a) APPLICATION TO DISTRICT COURT.
(b) APPLICATION TO THE SUPREME COURT.
(c) FORM OF BRIEFS, APPENDICES AND OTHER PAPERS.

V. GENERAL PROVISIONS

19. Record of commissions and oaths.
(a) COMMISSIONS AND OATHS.
(b) MINUTES OF COURT.

Rule
20. Filing and service.
(a) FILING.
(b) SERVICE OF ALL PAPERS REQUIRED.
(c) MANNER OF SERVICE.
(d) PROOF OF SERVICE.

21. Computation and extension of time.
(a) COMPUTATION OF TIME.
(b) EXTENSION OF TIME.
(c) ADDITIONAL TIME AFTER SERVICE BY MAIL.

22. Motions.

23. Briefs.
(a) BRIEF OF THE APPELLANT.
(b) BRIEF OF THE RESPONDENT.
(c) REPLY BRIEF.
(d) REFERENCES IN BRIEFS TO PARTIES.
(e) REFERENCES IN BRIEFS TO THE RECORD.
(f) REPRODUCTION OF STATUTES, RULES, REGULATIONS, ETC.
(g) LENGTH OF BRIEFS AND COSTS.
(h) BRIEFS IN CASES INVOLVING CROSS APPEALS.

24. Brief of an amicus curiae.

25. The appendix to the briefs.
(a) USE OF AN APPENDIX.
(b) CONTENTS OF THE APPENDIX.
(c) ARRANGEMENT OF THE APPENDIX.
(d) REPRODUCTION OF EXHIBITS.

26. Filing and service of briefs.
(a) TIME FOR FILING BRIEFS.
(b) NUMBER OF COPIES TO BE FILED AND SERVED.
(c) CONSEQUENCES OF FAILURE TO FILE BRIEFS.

27. Form of briefs, the appendix, motions and other papers.
(a) FORM OF BRIEFS, APPENDICES AND SEPARATE VOLUMES OF EXHIBITS.
(b) TYPEWRITTEN PAPERS AND MOTIONS.
(c) FIRST PAGE AND COVER.

28. Prehearing conference.

29. Oral argument.
(a) NOTICE OF HEARING—POSTPONEMENT.
(b) TIME ALLOWED FOR ARGUMENT.
(c) ORDER AND CONTENT OF ARGUMENT.
(d) CROSS AND SEPARATE APPEALS.

Rule
(e) NONAPPEARANCE OF COUNSEL—FAILURE TO FILE BRIEFS.
(f) SUBMISSION ON BRIEFS.
(g) USE OF PHYSICAL EXHIBITS AT HEARING—REMOVAL.

30. Entry and notice of orders and judgments.
(a) ENTRY AND NOTICE.

31. Interest on judgments.

32. Damages for appeal without merit.

33. Costs.
(a) COSTS ON APPEAL.
(b) COSTS OF BRIEFS AND APPENDICES.
(c) COSTS TAXABLE IN THE DISTRICT COURTS.
(d) COSTS IN ORIGINAL PROCEEDINGS.
(e) UNNECESSARY COSTS.
(f) NOTATION BY CLERK.

34. Petitions for rehearing.

35. Notice and copy of decision—Remittitur—Mandate from United States supreme court.
(a) NOTICE AND COPY OF DECISION TO BE FURNISHED.
(b) REMITTITUR—WHEN ISSUED—WHEN COPY OF OPINION TO ACCOMPANY.
(c) MANDATE FROM UNITED STATES SUPREME COURT—PROCEDURE THEREON.

36. Voluntary dismissal.

37. Substitution of parties.
(a) DEATH OF A PARTY.
(b) SUBSTITUTION FOR OTHER CAUSES.
(c) PUBLIC OFFICERS—DEATH OR SEPARATION FROM OFFICE.

38. Cases involving constitutional questions where the state is not a party.

39. Calendar—Withdrawal of records.
(a) PLACING CAUSES UPON CALENDAR.
(b) SETTING CAUSES FOR ARGUMENT.
(c) ADVANCEMENT OF CAUSES.
(d) PERMISSION TO TAKE RECORD FROM CLERK'S OFFICE.

40. Appeals from injunction orders.

41. Statutes and rules amended.

Rule
42. Applicability in general.
(a) SPECIAL STATUTORY PROCEEDINGS.
(b) APPEALS TO DISTRICT COURTS.
(c) RULES INCORPORATED INTO STATUTES.

43. Title—Effective date—Statutes superseded.
(a) TITLE.
(b) EFFECTIVE DATE AND APPLICATION TO PENDING PROCEEDINGS.
(c) STATUTES AND RULES SUPERSEDED.

Appendix of forms.

Table A. List of statutes and rules superseded or amended.

B. List of rules of appellate civil procedure superseding, in whole or in part, or amending, statutes and rules.

C. List of statutes and rules superseded, in whole or in part, or amended, by designated rules of appellate civil procedure.

I. APPLICABILITY OF RULES

Rule 1. Scope of rules—From what judgment or order an appeal may be taken.
2. What the court may review on an appeal from a judgment.
3. Suspension of the rules.

Rule 1. Scope of rules—From what judgment or order an appeal may be taken.

These rules govern procedure in appeals in civil cases to the supreme court of Montana from Montana district courts and original proceedings in the supreme court of Montana. The party applying for original relief is known as the petitioner and the adverse party as the defendant. The party appealing is known as the appellant, and the adverse party as the respondent.

A party aggrieved may appeal from a judgment or order, except when expressly made final by law, in the following cases:

(a) From a final judgment entered in an action or special proceeding commenced in a district court, or brought into a district court from another court or administrative body.

(b) From an order granting a new trial; or granting or dissolving an injunction; or refusing to grant or dissolve an injunction; or dissolving or refusing to dissolve an attachment; from an order changing or refusing to change the place of trial when the county designated in the complaint is not the proper county; from an order appointing or refusing to appoint a receiver, or giving directions with respect to a receivership, or refusing to vacate an order appointing or affecting a receiver; from an order directing the delivery, transfer, or surrender of property; from any special

order made after final judgment; and from such interlocutory judgments or orders in actions for partition as determine the rights and interests of the respective parties and direct partition to be made. In any of the cases mentioned in this subdivision the supreme court, or a justice thereof, may stay all proceedings under the order appealed from, on such conditions as may seem proper.

(c) From a judgment or order granting or refusing to grant, revoking or refusing to revoke, letters testamentary, or of administration, or of guardianship; or admitting or refusing to admit a will to probate, or against or in favor of the validity of a will, or revoking or refusing to revoke the probate thereof; or against or in favor of setting apart property, or making an allowance for a widow or child; or against or in favor of directing the partition, sale, or conveyance of real property, or settling an account of an executor, or administrator, or guardian; or refusing, allowing, directing the distribution or partition of any estate, or any part thereof, or the payment of a debt, claim, legacy, or distributive share; or confirming or refusing to confirm a report of an appraiser setting apart a homestead.

All questions raised on an order overruling a motion for a new trial or on an order changing or refusing to change the place of trial under R. C. M. 1947, section 93-2906 subdivisions 2, 3 or 4 thereof may be raised and reviewed on an appeal from the judgment.

Advisory Committee's Note

Section 93-8003, R. C. M. 1947, is restated and clarified. The effect of section 93-8004 (3), referring to "an order changing or refusing to change a place of trial," is limited by providing for appeals from orders re change of venue only in cases where the motion for change is based upon subdivision 1 of section 93-2906.

Since these rules only apply to appeals from district courts to the Montana supreme court, the provisions of sections 93-8001 and 93-8002 are not superseded in so far as they refer to appeals in actions in police or justice's courts: a judgment or order in a civil action in police or justice's courts, except when expressly made final, may be reviewed as prescribed in R. C. M. 1947, sections 93-7901 to 93-7908.

Denial of Motion

Where district court exceeded its jurisdiction in denying motion to quash summons and dismiss action where the summons had not been served and returned within the three years required by M. R. Civ. P., Rule 41(e) the order was not appealable under this rule. State ex rel. Belwin, Inc. v. Davison, — M —, 420 P 2d 842, 844.

Writ of supervisory control was proper where lessor's motion to dismiss sublessees' action for breach of lease agreement, to which sublessees were not parties, was denied by the district court, the order denying the motion to dismiss not being appealable under this rule. State ex rel. Buttrey Foods, Inc. v. District Court, — M —, 420 P 2d 845, 847.

DECISIONS UNDER FORMER LAW

Dismissal of Action

An order granting a motion to dismiss was not appealable under former section 93-8003. Payne v. Mountain States Telephone & Telegraph Co., 142 M 406, 385 P 2d 100; Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1.

Injunctions and Restraining Orders

Order denying county commissioner's motion to quash temporary injunction against use of real property valuations made by private appraisal group and relied on by reclassification officer appointed by commissioners to determine 1965 tax assessment rolls was appealable under former section 93-8003. State ex rel. Keast v. Krieg, 145 M 521, 402 P 2d 405.

Rule 2. What the court may review on an appeal from a judgment.

Upon appeal from a judgment, the court may review the verdict or decision, and any intermediate order or decision excepted or objected to

within the meaning of Rule 46 of the Montana Rules of Civil Procedure, which involves the merits, or necessarily affects the judgment, except a decision or order from which an appeal might have been taken.

Advisory Committee's Note

This rule incorporates R. C. M. 1947, section 93-8022.

Objections First Raised on Appeal

In condemnation proceedings by the state highway commission to condemn a right of way for an interstate highway which divided ranch into two large tracts making an underpass necessary, alleged error of trial court in its preliminary order of condemnation of ordering commission at its own expense to install, construct and maintain the underpass on the ground that the commission had previously agreed to install the underpass, could not be raised for the first time on appeal where the question was not raised at the time of the trial in the lower court. State ex rel. State Highway Commission v. Wheeler, — M —, 419 P 2d 492, 496.

Rule 3. Suspension of the rules.

In the interest of expediting decision upon any matter before it, or for other good cause shown, the supreme court may, except as otherwise provided in Rule 21(b), suspend the requirements or provisions of these rules on application of a party or on its own motion and may order proceedings in accordance with its direction.

Advisory Committee's Note

This rule is taken from Rule 2 of the Federal Draft. Its purpose is explained by the Federal Advisory Committee's Note. Adjusted to state practice, this purpose is to make clear the power of the supreme court to expedite the determination of cases of pressing concern to the public or to the litigants by prescribing a time schedule other than that provided by the rules. The rule also contains a general authorization to the supreme court to relieve litigants of the consequences of default where manifest injustice would otherwise result. Rule 21(b) prohibits the supreme court from extending the time for taking appeal.

II. APPEALS FROM JUDGMENTS AND ORDERS OF DISTRICT COURTS

Rule 4. How taken.
5. Time for filing notice of appeal.
6. Undertaking for costs on appeal.
7. Stay of judgment or order pending appeal.
8. Sureties and their justification.
9. The record on appeal.
10. Transmission of the record.
11. Docketing the appeal—Filing of the record.
12. Effect of dismissal.
13. Acts of executors, administrators or guardians valid when appointment vacated.
14. Ruling against respondent may be reviewed.
15. Remedial powers of the supreme court.
16. Remittitur must be certified to the clerk of the district court.

Rule 4. How taken.

(a) FILING THE NOTICE OF APPEAL. An appeal shall be taken by filing a notice of appeal in the district court. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the supreme court deems appropriate, which may include dismissal of the appeal.

(b) JOINT APPEALS. If two or more persons are entitled to appeal from a judgment or order of the district court and their interests

are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate notices of appeal as a single appellant.

(c) CONTENT OF THE NOTICE OF APPEAL. The notice of appeal shall specify the party or parties taking the appeal; and shall designate the judgment or order appealed from. Form 1 in the Appendix of Forms is a suggested form of notice of appeal.

(d) SERVICE OF NOTICE OF APPEAL. The clerk of the district court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the party at his last known address, and shall mail a copy of the notice of appeal to the clerk of the supreme court. The clerk of the district court shall note on each copy served the date on which the notice of appeal was filed. If an appellant is represented by counsel, his counsel shall provide the clerk with sufficient copies of the notice of appeal to permit the clerk to comply with the requirements of this rule. Failure of the clerk to serve notice shall not affect the validity of the appeal. The notice shall be sufficient notwithstanding the death of a party or his counsel. The clerk shall note in the docket the names of the parties to whom he mails copies, with the date of mailing.

Advisory Committee's Note

This rule is patterned after Rule 3 of the Federal Draft, but excludes references to criminal cases, habeas corpus proceedings and bankruptcy. Nothing other than the filing of a notice of appeal in the district court is required for the perfecting of an appeal. In the interest of providing the supreme court with prompt notice that its jurisdiction has been invoked, the rule directs the clerk of the district court to forward a copy of the notice of appeal to the clerk of the supreme court. The requirement that the appellant furnish the clerk with the necessary number of copies of the notice of appeal and that the clerk endorse on each copy served the date on which the notice was filed are for the convenience of the clerk and litigants respectively.

DECISIONS UNDER FORMER LAW

Service on Respondent

Where notice of appeal was not served on the respondent party within six months of the date of judgment, the supreme court could not acquire jurisdiction even though notice was filed with the district court within the statutory period. Seiffert v. Police Commission of Helena, 144 M 52, 394 P 2d 172.

Rule 5. Time for filing notice of appeal.

The time within which an appeal from an order must be taken shall be 30 days from the entry thereof, and the time within which an appeal from a judgment must be taken shall be 30 days from the service of notice of entry of judgment as provided in Rule 77(d) of the Montana Rules of Civil Procedure, but if the state of Montana or an officer or agency thereof is a party the notice of appeal shall be filed within 60 days from the entry of the order and 60 days from the service of notice of the entry of judgment. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 7 days of the date on which the first notice of appeal was filed, or within the time otherwise provided by this rule, whichever period last expires.

The running of the time for filing a notice of appeal is suspended as to all parties by a timely motion filed in the district court by any party pursuant to the Montana Rules of Civil Procedure hereafter enumerated in this sentence, and the full time for appeal fixed by this rule commences to run and is to be computed from mailing by the clerk of notice of the entry of any of the following orders made upon a timely motion under such rules: (1) granting or denying a motion for judgment under Rule 50(b); (2) granting or denying a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under Rule 59 to alter or amend the judgment; (4) denying a motion for a new trial under Rule 59.

Upon showing of excusable neglect, the district court may extend the time for filing the notice of appeal by any party for a period not to exceed 30 days from the expiration of the original time prescribed by this rule.

Advisory Committee's Note

This rule is patterned after Rule 4 of the Federal Draft. (Provisions for appeals in bankruptcy, petitions for impeachment, under the Railway Labor Act, under the Interlocutory Appeals Act, and in criminal cases, are omitted.) It materially shortens the time for taking an appeal.

The Federal Draft provides that the notice of appeal shall be filed within 30 days "of the date of the entry of the judgment order appealed from." The change, which measures the time from service of notice of entry of the judgment, is for the purpose of avoiding uncertainty as to what is a judgment and reducing the possibility of lack of knowledge of the entry of the judgment or order.

The provision for added time for appeal by other parties after notice of appeal is filed by one party is new. The Federal Advisory Committee Note explains this as follows: "It not infrequently happens that a party considers himself aggrieved by the final judgment but is willing to abide by it if it is to be the final result of the action. Such a party should be protected against the possibility that another party may file a final hour appeal and thereby oblige the forbearing party to undergo the expense of an appeal without the opportunity of presenting his own grievance" to the supreme court.

The time limit for taking an appeal would not prevent the taking of an appeal at any time after the entry of the judgment or order and before service of notice of entry.

The final paragraph permits an extension of the time for taking an appeal by the district court "upon a showing of excusable neglect." In view of the ease with which an appeal may be taken—the filing of a simple notice with the clerk of court—and the unlikelihood that there will not be actual notice of the entry of the judgment or order, it would be an extraordinary case which would justify an extension. But the district court should have the authority to extend time in extraordinary cases where injustice would otherwise result. The phrase "by any party" makes it clear that the district court may extend the time allowed for filing a cross or separate appeal after an initial appeal has been filed.

Rule 6. Undertaking for costs on appeal.

(a) [Form of undertaking—Time for filing]. Within 10 days after service of notice of appeal an undertaking for costs on appeal shall be filed in the district court, or a deposit of the money in the amount thereof be made with the clerk of the district court to abide the event of the appeal, or the undertaking be waived by the adverse party in writing. The undertaking must be executed on the part of the appellant by at least 2 sureties, or by a corporate surety as may be authorized by law, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal, or on the dismissal thereof, not exceeding five hundred dollars. If the undertaking on appeal is not filed

within the time specified, or if the undertaking filed is found insufficient, and if the action is not yet docketed with the supreme court, an undertaking may be filed at such time before the action is so docketed as may be fixed by the district court. After the action is so docketed, application for leave to file an undertaking may be made only in the supreme court. The undertaking for costs herein provided may be combined in a single document with a supersedeas bond under Rule 7.

Advisory Committee's Note

Rules 7 and 8 of the Federal Draft contain provisions for appeal bonds and the stay of judgments and orders. These provisions are not followed in the rule. Rather Rules 6, 7 and 8 hereof are substituted. These provisions are believed to be more in accord with state practice and to better fit into Montana statutes than do the provisions of the Federal Draft. This rule supersedes R. C. M. 1947, sections 93-8005, 93-8006, 93-8012, 93-8015, and compares with Federal Rule 73(c) and (e).

The amount of the undertaking has remained at $300 since 1895, and the rule would increase it to $500. Also, express provision is made for corporate sureties as may be authorized by law. Such authorization is found in R. C. M. 1947, section 93-8711.

Rule 7. Stay of judgment or order pending appeal.

(a) [Stay upon entry of judgment—Undertaking]. Upon entry of a judgment or order a party may apply to the district court on notice or ex parte for a stay of the execution of the judgment or order. The court in its discretion may grant said stay for such period of time and under such conditions as the court deems proper, including restraining the party from disposing of, encumbering, or concealing his property. Upon service of notice of appeal, if the court has made no such order or the appellant desires a stay for a longer period than ordered, he may present to the district court and secure its approval of a supersedeas bond which shall have such surety or sureties as are required for an undertaking for costs on appeal prescribed by Rule 6(a). The bond shall be conditioned for the satisfaction of the judgment or order in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment or order is affirmed, and to satisfy in full such modification of the judgment or order and such costs, interest, and damages as the supreme court may adjudge and award. When the judgment or order is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment or order remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the district court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment or order determines the disposition of property in controversy as in real actions, replevin, and actions to foreclose mortgages, or when such property is in the custody of the sheriff or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay. On application, the supreme court in the interest of justice may suspend, modify, restore, or grant any order made under this subdivision.

(b) [Sale of perishable property]. If the judgment or order appealed

from directs the sale of perishable property, the district court may order the property to be sold and the proceeds thereof to be deposited, to abide the judgment of the supreme court.

(c) [Cases in which stay of proceedings not allowed]. No stay of proceedings shall be allowed upon a judgment or order which adjudges the defendant guilty of usurping, or intruding into, or unlawfully holding public office, civil or military, within this state; or which grants a writ of mandamus, or of prohibition, against a tribunal, corporation, public officer, or board, commanding certain acts to be done which ought to be done by such tribunal, corporation, public officer, or board, and not involving the payment or allowance of money or its equivalent.

Advisory Committee's Note

This rule supersedes subdivisions (a) and (d) of Rule 62 of the Montana Rules of Civil Procedure. It also supersedes section 93-8013 in so far as applicable to appeals from district courts to the supreme court. However, since these rules do not apply to appeals from police and justices' courts, section 93-8013 is not superseded in so far as it provides that in cases where an undertaking is required on appeal by the provisions of sections 93-7901 to 93-7908, "a deposit in the court below of the amount of the judgment appealed from, and three hundred dollars in addition, shall be equivalent to filing the undertaking; and . . . the undertaking or deposit may be waived by the written consent of the respondent." Also section 93-8014 is superseded, and subdivision (c) of this rule is patterned after the last part of that section.

The provision of this rule that, upon entry of a judgment or order a party may apply to the district court on notice or ex parte for a stay of execution, is designed to afford time to obtain a supersedeas bond during which the status quo is maintained by court order. The power of the supreme court recognized by the last sentence of subdivision (a) supplements the power of the district court.

DECISIONS UNDER FORMER LAW

Eminent Domain Proceeding

Where state highway commission filed notice of appeal and perfected its appeal after writ of execution under section 93-9918 had issued, the appeal stayed the judgment although no bond was filed as required by this section, since under Rule 62(e), no security was required from the state. Robertson v. State Highway Commission, — M —, 420 P 2d 21, 24.

Rule 8. Sureties and their justification.

(a) [Liability of surety—Enforcement]. In cases where an undertaking on appeal or supersedeas bond with sureties is required, the provisions of R. C. M. 1947, sections 93-8710 to 93-8715, inclusive, apply. By entering into an undertaking on appeal or supersedeas bond given pursuant to Rules 6 and 7, the surety submits himself to the juridiction of the district court and irrevocably appoints the clerk of the district court as his agent upon whom papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of any independent action. The motion and such notice of the motion as the district court prescribed may be served on the clerk of that court, who shall forthwith mail copies to each surety whose address is known.

(b) [Justification of sureties]. A party may except to the sufficiency of the sureties to any bond or undertaking mentioned in this rule at any time within 30 days after the filing of such bond or undertaking; and unless they or other sureties, within 20 days after service of notice of such exception, justify before a judge of the district court, or the clerk thereof, upon 5 days' notice to the other parties of the time and place of

justification, execution of the judgment or order appealed from is no longer stayed.

Advisory Committee's Note

The provisions of subdivision (a) of the rule with respect to proceedings against sureties is patterned after Rule 8(b) of the Federal Draft. Subdivision (b) of the rule follows the existing Montana practice provided by R. C. M. 1947, section 93-8013, but the language is changed to avoid confusion where there are cross appeals or mixed forms of relief and to make it clear that either appellant or respondent, or both, may except to the sufficiency of sureties on a bond or undertaking furnished by the other.

Rule 9. The record on appeal.

(a) COMPOSITION OF THE RECORD ON APPEAL. The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

(b) THE TRANSCRIPT OF PROCEEDINGS—DUTY OF APPELLANT TO ORDER—NOTICE TO RESPONDENT IF PARTIAL TRANSCRIPT IS ORDERED—COSTS OF PRODUCING. Within 10 days after filing the notice of appeal the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record. In all cases where the appellant intends to urge insufficiency of the evidence to support the verdict, order or judgment in the district court, it shall be the duty of the appellant to order the entire transcript of the evidence. Wherever the sufficiency of the evidence to support a special verdict or answer by a jury to an interrogatory, or to support a specific finding of fact by the trial court, is to be raised on the appeal by the appellant, he shall be under a duty to include in the transcript all evidence relevant to such verdict, answer or finding. Unless the entire transcript is to be included, the appellant shall, within the time above provided, file and serve on the respondent a description of the parts of the transcript which he intends to include in the record and a statement of the issues which he intends to present on the appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary he shall within 10 days after such filing and service order such parts from the reporter or procure an order from the district court requiring the appellant to so do.

The cost of producing the transcript shall be paid by the appellant, or he shall make satisfactory arrangements with the reporter for the payment of such cost; but, if the appellant considers that any part of the record designated by the respondent for inclusion is unnecessary for the determination of the issues presented, he shall advise the respondent, and the district court may impose upon the respondent the cost of producing any part which it deems unnecessary for the determination of the issues.

The reporter shall certify the correctness of the transcript.

(c) STATEMENT OF THE EVIDENCE OR PROCEEDINGS WHEN NO REPORT WAS MADE OR WHEN THE TRANSCRIPT IS UNAVAILABLE. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may, within 10 days from the hearing or trial or such time extended as

the district court may for good cause shown permit, prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 10 days after service. Thereupon, the statement and any objections or proposed amendments shall be submitted for settlement and approval to the district judge who handled the proceedings, and as settled and approved shall be included by the clerk of the district court in the record on appeal. A judge may settle and approve such record after he ceases to be a judge. If such judge before the statement is settled and approved dies, is removed from office, becomes disqualified, is absent from the state, or refuses to settle and approve the statement, it shall be settled and approved in such manner as the supreme court may direct.

(d) AGREED STATEMENT AS THE RECORD ON APPEAL. In lieu of the record on appeal as defined in subdivision (a) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the district court and shall then be certified to the supreme court as the record on appeal and transmitted thereto by the clerk of the district court within the time provided by Rule 10. Copies of the agreed statement may be filed as the appendix required by Rule 25.

(e) CORRECTION OR MODIFICATION OF THE RECORD. If any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the district court, either before or after the record is transmitted to the supreme court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the supreme court.

Advisory Committee's Note

This rule is patterned after Rule 10 of the Federal Draft.

Subdivision (a). This subdivision provides for the use of the original trial record as the official record on appeal, and judgment rolls are nowhere provided for in these Rules. This use of the trial record is now provided for in all federal circuit courts.

Subdivision (b). The Federal Advisory Committee's Note states: "The appellant is required to serve a statement of the issues which he intends to present on appeal if only a part of the proceedings is transcribed solely to allow the appellee to determine whether the partial transcript will be adequate for the determination of the issues presented by the appeal. Such a statement is not the equivalent of an assignment of errors, which is nowhere required in the proposed rules, and the statement would not result in limiting the issues on appeal. The precise statement of the issues presented by the appeal is to be made in the brief. An appellee who can show that he was misled by the statement required by this subdivision and in consequence failed to designate for transcription material parts of

the reported proceedings may seek relief under subdivision (e) of this rule."

The second and third sentences of this subdivision following the title are added to the Federal Draft to make the duty which rests on the appellant more specific. Also, the second paragraph of this subdivision has been expanded to afford protection to an appellant against payment of costs of a transcript of unnecessary portions of the proceeding ordered by a respondent. And the last paragraph, requiring the reporter to certify the correctness of the transcript, has been added to the Federal Draft.

Subdivision (c). The provision of the Federal Draft for settlement has been expanded, patterned after section 93-5508; also, because memories are short, there has been added a time limit for the preparation of the statement.

Subdivisions (d) and (e) are the same as the provisions of the federal draft, adjusted to the Montana court system.

DECISIONS UNDER FORMER LAW

Evidence Not in Record

Merits of appeal could not be determined where purported transcript on appeal did not contain certificate of judge that records included in the transcript had been used at the hearing. Anderson v. Mennie, 144 M 105, 394 P 2d 853, 854.

Late Presentment of Bill

A bill of exceptions presented after the time prescribed in former section 93-5505 was a nullity and could not be considered on appeal. Anderson v. Mennie, 144 M 105, 394 P 2d 853, 854.

Notice of Appeal

Where appellant sought to amend notice of appeal from a nonappealable order so as to make it an appeal from final judgment, the supreme court acquired no jurisdiction to allow such amendment when the statutory provisions for time and manner of appeal were not complied with. Payne v. Mountain States Telephone & Telegraph Co., 142 M 406, 385 P 2d 100.

Rule 10. Transmission of the record.

(a) TIME FOR TRANSMISSION—NUMBER OF COPIES OF TRANSCRIPT—DUTY OF APPELLANT. The record on appeal, including the transcript necessary for the determination of the appeal, shall be transmitted to the supreme court within 40 days after the filing of the notice of appeal unless the time is shortened or extended by an order entered under subdivision (c) of this rule. Six copies of each transcript must be lodged with the clerk of this court for filing. Promptly after filing the notice of appeal the appellant shall comply with the provisions of Rule 9(b) and shall take any other action necessary to enable the clerk to assemble and transmit the record. If more than one appeal is filed, each appellant shall comply with the provisions of Rule 9(b) and this subdivision, and a single record shall be transmitted within 40 days after the filing of the final notice of appeal.

(b) DUTY OF CLERK TO TRANSMIT THE RECORD. When the record is complete for purposes of the appeal, the clerk of the district court shall transmit it to the clerk of the supreme court. The clerk shall number the documents comprising the record and shall transmit with the record a numbered list of the documents, identifying each with reasonable definiteness. Documents in bulky containers and physical exhibits other than documents shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of the supreme court. A party must make advance arrangements with the clerk of the district court for the transportation of bulky or weighty exhibits and with the clerk of the supreme court for their receipt. Transmission of the record is effected when the clerk of the district court mails or otherwise forwards

the record to the supreme court. The clerk of the district court shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the supreme court.

(c) EXTENSION OF TIME FOR TRANSMISSION OF THE RECORD—REDUCTION OF TIME. The district court may extend the time for transmitting the record. The request for extension must be made within the time originally prescribed or within an extension previously granted, and the district court shall not extend the time to a day more than 90 days from the date of filing of the first notice of appeal. If the district court is without authority to grant the relief sought or has denied a request therefor, the supreme court may on motion extend the time for transmitting the record or may permit the record to be transmitted and filed after the expiration of the time allowed or fixed. A motion for an extension of time for transmitting the record made in either court shall show that the inability of the appellant to cause timely transmission of the record is due to causes beyond his control or to circumstances which may be deemed excusable neglect. If a request for an extension of time for transmitting the record has been previously denied, the motion shall set forth the denial and shall state the reasons therefor, if any were given.

The district court or the supreme court may require the record to be transmitted and the appeal to be docketed at any time within the time otherwise fixed or allowed therefor.

(d) RETENTION OF THE RECORD IN THE DISTRICT COURT BY ORDER OF COURT. The supreme court may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

If the record is required in the district court for use there pending the appeal, the district court may make an order to that effect, and the clerk of the district court shall retain the record and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the district court shall allow and copies of such parts as the parties may designate.

If the record is retained in the district court by order of either court, the clerk of the district court shall retain it subject to the order of the supreme court, and transmission of the copy of the docket entries shall constitute transmission of the record.

(e) STIPULATION OF PARTIES THAT PARTS OF THE RECORD BE RETAINED IN THE DISTRICT COURT. The parties may agree by written stipulation filed in the district court that designated parts of the record shall be retained in the district court unless thereafter the supreme court shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(f) RECORD FOR PRELIMINARY HEARING IN THE SUPREME COURT. If prior to the time the record is transmitted a party desires to make in the supreme court a motion for dismissal, for a stay pending appeal, for additional security on the undertaking on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the district court at the request of any party shall transmit to the supreme court such parts of the original record as the party shall designate.

Advisory Committee's Note

This rule is taken from Rule 11 of the Federal Draft.

Subdivision (a). This subdivision fixes the time for transmission rather than for filing at 40 days after the filing of the notice of appeal, thus enabling the parties to know with certainty precisely when the complete record must be transmitted to the supreme court. The only justification for delay between filing the notice of appeal and the transmission of the record to the supreme court is the time required for securing a transcription of the trial proceedings. If the appellant is prevented from securing the necessary transcript within the 40-day period by circumstances beyond his control, he may seek an extension of time for transmitting the record.

The requirement that the appellant take any other action necessary to enable the clerk to assemble and transmit the record emphasizes the primary responsibility of the appellant for effecting timely transmission of the record. His responsibilities include, for example, the payment of any required fee or charge.

Subdivision (b). The appellant is allowed 40 days between the filing of the notice of appeal and the transmission of the record in order to allow him to secure the necessary transcript. If the transcript is available sooner, the allowance is unnecessary, and either party may oblige the clerk of the district court to transmit the record forthwith. On the other hand, unless the record contains the necessary transcript, the clerk is not to transmit it.

Subdivision (c). Cause for extension of the time by either the district or the supreme court must be shown. The final sentence permits any party to expedite the appeal in cases in which the record is complete by obtaining an order that the record be transmitted and the appeal docketed at a date earlier than otherwise allowed or fixed.

Subdivision (d). This subdivision permits the record to be retained in the district court by order of the supreme court, or order of the district court subject to the order of the supreme court. Especially in cases where the judgment or order does not dispose of the entire litigation, retention of the record in the district court may be a convenience for counsel and the district court. In some cases there may be no need for the transmission of the record, and the labor and expense of transmission may be saved.

Subdivision (e). This subdivision permits parties to stipulate against transmission of designated parts of the record free from the fear that a mistake may substantially affect the scope of the appeal. The final sentence makes it clear that a stipulation that designated parts of the record not be transmitted in no way diminishes the record itself. In effect, a party may at any time revoke his stipulation against transmission of parts of the record.

Subdivision (f). The substance of this subdivision was taken from Fed. R. Civ. P., Rule 75(j).

Rule 11. Docketing the appeal—Filing of the record.

(a) DOCKETING THE APPEAL. Within the time allowed or fixed for transmission of the record, the appellant shall pay to the clerk of the supreme court the fee for filing the record on appeal fixed by section 82-503 of the 1947 Revised Codes of Montana, and the clerk shall thereupon enter the appeal upon the docket. If an appellant is authorized to prosecute the appeal without prepayment of fees, the clerk shall enter the appeal upon the docket at or before the time of filing the record. An appeal shall be docketed under the title given to the action in the district court with such addition as is necessary to indicate the identity of the appellant

(b) FILING OF THE RECORD. Upon receipt of the record by the clerk of the supreme court following its timely transmittal, and after the appeal has been timely docketed, the clerk shall file the record. The clerk shall immediately give notice to all parties of the date on which the record was filed.

(c) DISMISSAL FOR FAILURE OF APPELLANT TO CAUSE TIMELY TRANSMISSION OR TO DOCKET APPEAL. If the appellant shall fail to cause timely transmission of the record or to pay the filing fee if a filing fee is required, any respondent may file a motion in the supreme court to dismiss the appeal. The motion shall be supported by a certificate of the clerk of the district court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, and the expiration date of any order extending the time for transmitting the record; and by proof that 7 days' notice in writing has been served on the appellant that application will be made for dismissal of the appeal. The clerk shall docket the appeal for the purpose of permitting the court to entertain the motion, without requiring payment of the filing fee, but the appellant shall not be permitted to appear without payment of the fees unless he is otherwise exempt therefrom. Instead of filing a motion to dismiss the appeal, the respondent may cause the record to be transmitted and may docket the appeal, in which event the appeal shall proceed as if the appellant had caused it to be docketed.

Advisory Committee's Note

This rule is patterned after Rule 12 of the Federal Draft, with adjustments to state practice. The provision of section 82-503 for a fee for filing the "transcript" on appeal will apply to the "record" on appeal pursuant to these rules.

The appellant's responsibility with respect to docketing and filing are specified. The appellant may pay the filing fee at any time after filing the notice of appeal, and it is then the duty of the clerk of the supreme court to enter the appeal on the docket. The appellant's responsibility is (1) to pay the filing fee at or before the time allowed or fixed for transmission of the record, and (2) to insure that the record is transmitted to the supreme court within the time allowed or fixed for its transmission. The clerk of the supreme court is directed to assign to cases on appeal the title which was used in the district court in the interest of facilitating future reference and citation and location of cases in indexes.

DECISIONS UNDER FORMER LAW

Notice of Appeal

Where appellant sought to amend notice of appeal from a nonappealable order so as to make it an appeal from final judgment, the supreme court acquired no jurisdiction to allow such amendment when the statutory provisions for time and manner of appeal were not complied with. Payne v. Mountain States Telephone & Telegraph Co., 142 M 406, 385 P 2d 100.

Rule 12. Effect of dismissal.

The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal.

Advisory Committee's Note

This rule incorporates R. C. M. 1947, section 93-8020.

Rule 13. Acts of executors, administrators or guardians valid when appointment vacated.

When the judgment or order appointing an executor, or administrator, or guardian is reversed on appeal, for error, and not for want of jurisdiction of the court, all lawful acts in administration upon the estate performed by such executor, or administrator, or guardian, if he have qualified, are as valid as if such judgment or order had been affirmed.

Advisory Committee's Note

This rule incorporates R. C. M. 1947, section 93-8016.

Rule 14. Ruling against respondent may be reviewed.

Whenever the record on appeal shall contain any order, ruling, or proceeding of the trial court against the respondent, affecting his substantial rights on the appeal of said cause, together with any required objection or exception of such respondent, the supreme court on such appeal shall consider such orders, rulings, or proceedings, and the objections and exceptions thereto, and shall reverse or affirm the cause on said appeal according to the substantial rights of the respective parties, as shown upon the record. And no cause shall be reversed upon appeal by reason of any error committed by the trial court against the appellant, where the record shows that the same result would have been attained had such trial court not committed an error or errors against the respondent.

Advisory Committee's Note

This rule incorporates R. C. M. 1947, section 93-8023, but eliminates references to bills of exceptions and statements of the case properly settled because these rules nowhere provide for such bills and statements.

Rule 15. Remedial powers of the supreme court.

When the judgment or order is reversed or modified, the supreme court may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as such restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment, or had under process issued upon the judgment, on an appeal from which the proceedings were not stayed; and for relief in such cases the appellant may have his action against the respondent, enforcing the judgment for the proceeds of the sale of the property, after deducting therefrom the expenses of the sale.

Advisory Committee's Note

This rule incorporates R. C. M. 1947, section 93-8024, substituting "supreme court" for "appellate court" and eliminating the provision for damages when the appeal is made for delay. Rule 32 covers the matter of damages.

Rule 16. Remittitur must be certified to the clerk of the district court.

When judgment is rendered upon the appeal, it must be certified by the clerk of the supreme court to the clerk of the district court from which the appeal is taken. The clerk of the district court must enter at length in the records of the court the certificate received. Also, in cases of appeal from a judgment, the clerk must enter a minute of the judg-

ment of the supreme court on the docket against the original entry; and in cases of appeal from an order, he must enter a minute against the entry of the order appealed from, containing a reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified by the supreme court on appeal.

Advisory Committee's Note

This rule incorporates the substance of R. C. M. 1947, section 93-8025, but eliminates references to the judgment roll, which is nowhere provided for in these rules.

III. ORIGINAL PROCEEDINGS—EXTRAORDINARY WRITS

Rule 17. Acceptance and manner of conducting.

Rule 17. Acceptance and manner of conducting.

(a) WHEN ACCEPTED. The supreme court is an appellate court but it is empowered by the constitution of Montana to hear and determine such original and remedial writs as may be necessary or proper to the complete exercise of its jurisdiction. The institution of such original proceedings in the supreme court is sometimes justified by circumstances of an emergency nature, as when a cause of action or a right has arisen under conditions making due consideration in the trial courts and due appeal to this court an inadequate remedy, or when supervision of a trial court other than by appeal is deemed necessary or proper.

(b) HOW COMMENCED AND CONDUCTED. Proceedings commenced in the supreme court originally to obtain writs of habeas corpus, injunction, review, mandate, quo warranto, supervisory control, and other remedial writs or orders, shall be commenced and conducted in the manner prescribed by the Code of Civil Procedure for the conduct of such or analogous proceedings and by these additional rules. All papers filed shall conform to the requirements of Rule 27.

(c) APPLICATIONS—WHEN FILED. The moving party's application shall be filed with the clerk of the supreme court one hour prior to its presentation to the court.

(d) APPLICATIONS—WHAT TO CONTAIN. The application for the issuance of any of the above writs or orders must set forth, in addition to the other requisite matters, the particular questions and issues anticipated or expected to be raised in the proceeding, and also the fact which renders it necessary and proper that the writ should issue originally from the supreme court; the said matters will be taken into consideration by the court in determining the necessity and propriety of accepting jurisdiction and granting the alternative writ or order to show cause. Each application shall also set forth as exhibits, without repetition of title of court and cause, a copy of each judgment, order, notice, pleading, document, proceeding or court minute referred to in the application, or necessary to make out a prima facie case or to substantiate the pleading or conclusion or legal effect. A memorandum of authorities must be filed with the application.

(e) APPLICATIONS—HOW AND WHEN PRESENTED. The supreme court will receive and hear original applications in open court

on any day when the court is in session; but at least an hour's prior notice of such presentation shall be given by counsel to the chief justice or acting chief justice. Not over fifteen minutes shall be allowed for the presentation of any such application unless on prior request further time is granted.

(f) ISSUANCE OF ALTERNATIVE WRIT OR ORDER TO SHOW CAUSE. This court will, as promptly as possible after the presentation of an application, either dismiss the same, issue an alternative writ, order to show cause, or such other remedial writ or order as it deems expedient.

(g) BRIEFS. At or before the time set for final hearing, each party shall serve and file his brief in full conformance with Rules 20, 23 and 27, and containing a statement of the facts and of the points of law applicable, with the authorities relied upon.

(h) HEARING—WHEN HAD. Unless otherwise ordered the hearing shall be had at the time fixed for the return. At or prior to said return time the opposing party shall serve and file, without waiver, any and all pleadings and motions desired to be presented, including answer or return, and all issues shall be argued at the hearing, the applicant opening and closing, and the parties being allowed the same time as upon argument of appeals. If testimony becomes necessary a reference will be ordered.

Advisory Committee's Note

This rule incorporates Montana Supreme Court Rule IV, with changes in subdivisions (e) and (f) designed to recognize that on original applications the court is not limited to the issuance of alternative writs or orders to show cause, but may issue whatever remedial writ or order it deems expedient.

References

State ex rel. Buttrey Foods, Inc. v. District Court, — M —, 420 P 2d 845, 847.

IV. APPEALS IN FORMA PAUPERIS

Rule 18. Applications and manner of proceeding.

Rule 18. Applications and manner of proceeding.

(a) APPLICATION TO DISTRICT COURT. A party who desires to proceed on appeal in forma pauperis shall file in the district court a motion for leave so to proceed together with an affidavit showing, in the detail prescribed by Form 2 of the Appendix of Forms, his inability to pay the fees and costs of the appeal or to give security therefor, his belief that he is entitled to redress, and a statement of the issues he intends to present on appeal. If the motion is granted, the party may proceed on appeal without further application to the supreme court and without payment of fees or costs or the giving of security therefor. If the motion is denied, the district court shall state the reasons for the denial.

(b) APPLICATION TO THE SUPREME COURT. If the motion for leave to proceed on appeal in forma pauperis is denied by the district court, a motion for leave so to proceed may be filed in the supreme court within 30 days after entry of the order of denial. The motion shall be

accompanied by a copy of the affidavit filed in the district court and of the statement of reasons for denial given by the district court.

(c) FORM OF BRIEFS, APPENDICES AND OTHER PAPERS. Parties allowed to proceed in forma pauperis may file briefs, appendices and other papers in typewritten form.

Advisory Committee's Note

This rule is patterned after Rule 23 of the Federal Draft, but omits the last clause of the Federal Draft reading "and may request that the appeal be heard on the original record without an 'appendix'." This change is made because these rules do not adopt the appendix system of Rule 30 of the Federal Draft. See Rule 25. This rule is believed to be consistent with R. C. M. 1947, section 93-8625.

V. GENERAL PROVISIONS

Rule 19. Record of commissions and oaths.
20. Filing and service.
21. Computation and extension of time.
22. Motions.
23. Briefs.
24. Brief of an amicus curiae.
25. The appendix to the briefs.
26. Filing and service of briefs.
27. Form of briefs, the appendix, motions and other papers.
28. Prehearing conference.
29. Oral argument.
30. Entry and notice of orders and judgments.
31. Interest on judgments.
32. Damages for appeal without merit.
33. Costs.
34. Petitions for rehearing.
35. Notice and copy of decision—Remittitur—Mandate from United States Supreme Court.
36. Voluntary dismissal.
37. Substitution of parties.
38. Cases involving constitutional questions where the state is not a party.
39. Calendar—Withdrawal of records.
40. Appeals from injunction orders.
41. Statutes and rules amended.
42. Applicability in general.
43. Title—Effective date—Statutes superseded.

Rule 19. Record of commissions and oaths.

(a) COMMISSIONS AND OATHS. The commissions and oaths of the justices and the clerk of this court, and the attorney general shall be recorded in the records of this court.

(b) MINUTES OF COURT. The minutes of this court shall be approved by the chief justice (or in his absence by the associate justice having the shortest term to serve), and attested by the clerk.

Advisory Committee's Note

This rule incorporates Montana Supreme Court Rule I.

Rule 20. Filing and service.

(a) FILING. Papers required or permitted to be filed must be placed in the custody of the clerk within the time fixed for filing. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are actually received within the time fixed for

filing. If a motion requests relief which may be granted by a single judge, the judge may permit the motion to be filed with him, in which event he shall note thereon the dates of filing and shall thereafter transmit it to the clerk.

(b) SERVICE OF ALL PAPERS REQUIRED. Copies of all papers, including any transcript, filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by the party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(c) MANNER OF SERVICE. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) PROOF OF SERVICE. Papers presented for filing shall contain acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment of proof of service but shall require such to be filed promptly thereafter.

Advisory Committee's Note

This rule is taken from Rule 25 of the Federal Draft, but the phrase "including any transcript" has been added to subdivision (b) to make it clear that copies of any transcript are to be served on all parties. The first paragraph of Montana Supreme Court Rule III is superseded.

Rule 21. Computation and extension of time.

(a) COMPUTATION OF TIME. In computing any period of time prescribed by these rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) EXTENSION OF TIME. The court for good cause shown may upon motion extend the time prescribed by these rules or by its order for doing any act, and may thereby permit an act to be done after the expiration of such time if the failure to act was excusable under the circumstances; but the court may not extend the time for filing a notice of appeal, except as provided in Rule 5.

(c) ADDITIONAL TIME AFTER SERVICE BY MAIL. Whenever a party is required or permitted to do any act within a prescribed period after service of a paper upon him and the paper is served by mail, 3 days shall be added to the prescribed period.

Advisory Committee's Note

This rule is patterned after Rule 26 of the Federal Draft. There are omitted provisions of the Federal Draft with respect to petitions for allowance, applications for permission to appeal, appeals

from advisory agencies, and a definition of "legal holiday." A definition of "legal holiday" is contained in R. C. M. 1947, section 19-107.

It is believed that these provisions are consistent with R. C. M. 1947, section 90-407.

Rule 22. Motions.

Unless another form is prescribed by these rules, an application for an order or other relief shall be made by filing a motion in writing for such order or relief. The motion shall state with particularity the grounds therefor and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Motions for procedural orders may be determined ex parte. The supreme court may authorize disposition of motions for procedural orders by a single judge. If a motion seeks dismissal of the appeal or other substantial relief, any party may file an answer in opposition within 7 days after service of the motion, or within such time as the court may direct. Motions, supporting papers and any response thereto may be typewritten.

At the time of filing a motion counsel shall present a proposed order, together with sufficient copies for service upon all counsel of record.

Advisory Committee's Note

This rule supersedes Montana Supreme Court Rule XI. It is patterned after Rule 27 of the Federal Draft, but the last sentence of the Federal Draft requiring the filing of three copies of motions and supporting papers has been omitted. Also, there has been added as a last paragraph the amendment of the Montana Supreme Court Rule XI, effective January 1, 1965.

Rule 23. Briefs.

(a) BRIEF OF THE APPELLANT. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of the issues presented for review.

(3) A statement of the case. The statement shall first indicate briefly the nature of the case and its disposition in the court below, e.g.: "The plaintiff brought this action in the district court to recover damages for the wrongful death of her husband. The jury returned a verdict for the plaintiff. On motion of the defendant the trial judge entered judgment for the defendant n. o. v. on the ground that there was no evidence to support a finding of negligence on the part of the defendant. From this judgment the plaintiff appeals."

There shall follow a statement of the facts relevant to the issues presented for review, with references to the pages of the parts of the record at which material facts appear (see subdivision (e)).

(4) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and pages of the record relied on.

(5) A short conclusion stating the precise relief sought.

(b) BRIEF OF THE RESPONDENT. The brief of the respondent shall conform to the requirements of subdivision (a) (1) to (4), except that a statement of the issues or of the case need not be made unless the respondent is dissatisfied with the statement of the appellant.

(c) REPLY BRIEF. The appellant may file a brief in reply to the brief of the respondent. The reply brief must be confined to new matter raised in the brief of the respondent. No further briefs may be filed except with leave of court.

(d) REFERENCES IN BRIEFS TO PARTIES. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such formal designations as "appellant" and "respondent." It promotes clarity to use names or descriptive terms such as "the employee," "the injured person," "the taxpayer," etc.

(e) REFERENCES IN BRIEFS TO THE RECORD. Whenever a reference is made in the briefs to the record, the reference must be to particular parts of the record, suitably designated, and to specific pages of each part, e. g., Answer, p. 7; Motion for Summary Judgment, p. 3; Transcript, p. 231. Intelligible abbreviations may be used. If reference is made to an exhibit, reference shall be made to the pages of the transcript on which the exhibit was identified, offered, and received or rejected.

(f) REPRODUCTION OF STATUTES, RULES, REGULATIONS, ETC. If determination of the issues presented requires the study of statutes, rules, regulations, etc., or relevant parts thereof, they may be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form. No such reproduction is required, unless ordered by the supreme court.

(g) LENGTH OF BRIEFS AND COSTS. Except by permission of the court briefs shall not exceed 50 pages of standard typographic printing or 70 pages of printing by any other process of duplicating or copying, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, etc. For purposes of assessing costs under R. C. M. 1947, section 93-8606, reasonable costs shall be limited as follows: For appellant's brief fifty (50) pages; for respondent's brief forty (40) pages; for reply brief fifteen (15) pages. In addition, reasonable costs for briefs shall be limited to $250 for appellant's brief and $200 for respondent's brief.

(h) BRIEFS IN CASES INVOLVING CROSS APPEALS. If a cross appeal is filed, the plaintiff in the court below shall be deemed the appellant for the purposes of this rule and Rules 25 and 26, unless the parties otherwise agree or the court otherwise orders. The brief of the respondent shall contain the issues and argument involved in his appeal as well as the answer to the brief of the appellant.

Advisory Committee's Note

This rule is patterned after Rule 28 of the Federal Draft, adjusted to state practice. The second paragraph of subdivision (e) of the Federal Draft is omitted, since these rules do not adopt the "appendix" system of Rule 30 of the Federal Draft. See Rule 25.

Also, in the Federal Draft, subdivision (f) requires reproduction of statutes,

rules, regulations, etc. This has been changed, so that reproduction is permissive, unless ordered by the supreme court.

Rule 24. Brief of an amicus curiae.

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. A motion of an amicus curiae for leave to participate in the oral argument will be granted only for extraordinary reasons.

Advisory Committee's Note

This rule is taken from Rule 29 of the Federal Draft. It follows the practice of a majority of federal circuits in requiring leave of court to file an amicus brief unless the litigants consent to its filing.

Rule 25. The appendix to the briefs.

(a) USE OF AN APPENDIX. At any time before final decision, the supreme court may order an appendix to any brief. Also, either the appellant or respondent may, if he deems it desirable, prepare, file and serve with his brief an appendix.

(b) CONTENTS OF THE APPENDIX. Unless otherwise ordered by the supreme court, an appendix shall contain: (1) the relevant docket entries in the proceeding below; (2) any relevant pleading and relevant portions of the charge, finding and opinion; (3) the judgment, order or decision in question; and (4) such other parts of the record as any party deems it essential for the judges of the court to read in order to decide the issues presented. In designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference or examination and shall not engage in unnecessary designation.

(c) ARRANGEMENT OF THE APPENDIX. At the beginning of the appendix there shall appear a chronological list of the parts of the record which it contains. Each part of the record shall be listed by the descriptive title given to that part by the reference made to it in the briefs. The page or pages of the appendix at which each part of the record thus listed appears shall be set out opposite each listing in a column at the right, so as to permit immediate location in the appendix of the parts of the record referred to in the briefs and contained in the appendix.

The relevant docket entries in the proceeding below shall follow the list of contents. Thereafter, the parts of the record shall be set out in chronological order. The original paging of each part of the record set out in the appendix shall be indicated by placing in brackets the number of the original page at the place where that page begins. Omissions in the text of papers or of testimony must be indicated by asterisks. A question and its answer may be contained in a single paragraph.

(d) REPRODUCTION OF EXHIBITS. Exhibits may be contained in a separate volume, suitably indexed.

Advisory Committee's Note

Rules 30 and 31 of the Federal Draft, require post-brief appendices, unless dispensed with by court rule or order. The rule does not follow the Federal Draft at this point. Rather, under this rule the

supreme court may order an appendix, or either party may if he chooses use an appendix. When an appendix is used it is to be filed and served with the brief.

Rule 26. Filing and service of briefs.

(a) TIME FOR FILING BRIEFS. The appellant shall serve and file his brief within 30 days after the date on which the record is filed. The respondent shall serve and file his brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the respondent, but, except for good cause shown, a reply brief must be served and filed at least 3 days before argument.

(b) NUMBER OF COPIES TO BE FILED AND SERVED. Ten copies of each brief shall be filed with the clerk of the supreme court unless otherwise ordered by the court, and one copy of each brief shall be served on counsel for each party separately represented. The clerk will not accept a brief for filing unless it is accompanied by acknowledgment or proof of service as required by Rule 20.

(c) CONSEQUENCES OF FAILURE TO FILE BRIEFS. If an appellant fails to file his brief within the time provided by this rule, or within the time extended, a respondent may move for dismissal of the appeal. If a respondent fails to file his brief, he will not be heard at oral argument except by permission of the court.

Advisory Committee's Note

This rule is patterned after Rule 31 of the Federal Draft.

Subdivision (a) follows the time fixed for filing of briefs provided in the Federal Draft, and that is the time now allowed by a majority of the federal circuits.

Subdivision (b) of the Federal Draft is omitted, since it provides a post-brief time for filing the appendix. Under Rule 25 an appendix must be filed and served with the brief, unless otherwise ordered by the supreme court.

Subdivision (b) of this rule is patterned after subdivision (c) of the Federal Draft. The number of copies to be filed and served, however, are adjusted to fit state practice and the present requirement of Montana Supreme Court Rule II.

Subdivision (c) of this rule follows subdivision (d) of Rule 31 of the Federal Draft.

Rule 27. Form of briefs, the appendix, motions and other papers.

(a) FORM OF BRIEFS, APPENDICES AND SEPARATE VOLUMES OF EXHIBITS. Briefs, appendices and separate volumes of exhibits may be produced by standard typographic printing or by any duplicating or copying process capable of producing a clear black image on white paper. Typewritten copies of briefs, appendices and separate volumes of exhibits may not be submitted without permission of the chief justice of the supreme court, except in behalf of parties allowed to proceed in forma pauperis. Pica solid is the smallest letter and the most compact form of composition allowed for all printed matter. Briefs, appendices and separate volumes of exhibits shall be on white uncalendered book paper in book or booklet form. If produced by the standard typographic printing process, the pages shall be ten inches long and seven inches wide, with a margin on the outer edge not less than one inch wide and on the inner edge not less than two inches wide. If produced by a duplicating or copying process, the pages shall be eleven inches long and eight and one-half inches wide, with a margin on the outer edge not less than one inch

wide and on the inner edge not less than two inches wide. The pages shall be fastened at the side and numbered at the top.

(b) TYPEWRITTEN PAPERS AND MOTIONS. Papers not required to be produced in a manner prescribed by subdivision (a) of this rule shall be plainly and legibly written by a typewriter with a new black ribbon and new black carbon paper of good grade, in double spacing, except that quotations may be single spaced, on one side only of white typewriter paper, eight and one-half inches wide and thirteen inches long, numbered at the bottom, with a ruled margin of one and one-half inches on the left-hand side of the page and one inch on the right-hand side, and numbered lines, not more than thirty-two lines to the page. The pages shall be bound at the left-hand side into volumes not containing more than two hundred fifty pages; provided, however, that if the pages number fifty or less they may be bound at the top.

In collating typewritten papers the copies shall not be mixed, but each copy shall consist throughout of uniform pages. Each page of every copy shall be opaque and each line of print thereon plainly legible. The difficulty of examining transparent, illegible and nonuniform typewritten copies has become so great that this rule will be strictly applied and papers not complying with it will not be received.

(c) FIRST PAGE AND COVER. All papers shall be bound in cardboard or pasteboard covers, unless bound at the top under subdivision (b) of this rule, in which case they may be bound in cover paper. On the first page and cover of all papers must be stated the title of this court, the title of the case as in the court below, adding to the words "Plaintiff" and "Defendant," the words "Appellant" and "Respondent" as the case may require, the names of counsel for appellant and respondent, the title of the papers, as "Appellant's Brief," "Appendix to Appellant's Brief," etc., and the venue from which the appeal is taken.

Advisory Committee's Note

Rule 32 of the Federal Draft is adjusted to conform to the paper and forms prescribed for state practice and Montana Supreme Court Rule II, as amended effective January 1, 1965. The provisions requiring the use of pica type and two typewritten originals are stricken as being obsolete or unnecessary.

Rule 28. Prehearing conference.

The court may direct the attorneys for the parties to appear before the court or a judge thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceedings by the court. The court or judge shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issue to those not disposed of by admission or agreements of counsel, and such order when entered controls the subsequent course of the proceedings, unless modified to prevent manifest injustice.

Advisory Committee's Note

This rule is taken from Rule 33 of the Federal Draft.

Rule 29. Oral argument.

(a) NOTICE OF HEARING—POSTPONEMENT. The clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the hearing must be made by motion filed reasonably in advance of the date fixed for hearing.

(b) TIME ALLOWED FOR ARGUMENT. Upon oral argument of an appeal or original proceeding, 40 minutes will be allowed appellant or applicant and 30 minutes to respondent. If counsel is of the opinion that additional time is necessary for the adequate presentation of his argument, he may request such additional time as he deems necessary by motion filed reasonably in advance of the date fixed for hearing. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) ORDER AND CONTENT OF ARGUMENT. The appellant or applicant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case, and the closing argument shall be limited to rebuttal of respondent's argument. Counsel will not be permitted to read at length from briefs, records or authorities.

(d) CROSS AND SEPARATE APPEALS. A cross or separate appeal shall be argued with the initial appeal at a single hearing, unless the court otherwise directs. If a case involves a cross appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument at the hearing.

(e) NONAPPEARANCE OF COUNSEL—FAILURE TO FILE BRIEFS. If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel is present, and the case will be decided on the briefs and the argument heard. If no counsel appear for any party, the case will be decided on the briefs unless the court shall otherwise order.

(f) SUBMISSION ON BRIEFS. By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(g) USE OF PHYSICAL EXHIBITS AT HEARING—REMOVAL. If physical exhibits other than documents are to be used at the hearing, counsel shall arrange to have them placed in the courtroom before the court convenes on the date of the hearing. After the hearing counsel shall cause the exhibits to be removed from the courtroom unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

Advisory Committee's Note

This rule is patterned after Rule 34 of the Federal Draft, but the time provisions are more liberal than those of the Federal Draft which allows 30 minutes to each side. It is intended that the time be afforded to opposing interests rather than to individual parties, as is true under the Federal Draft. Thus, if there are multiple appellants they have together but 40 minutes, and multiple respondents have a total of 30 minutes. The 40 minutes for the appellant or applicant may be divided between the opening and closing



RULES OF APPELLATE CIVIL PROCEDURE

RULE 33(a) is amended as follows:

RULE 33(a). **Cost on Appeal.** Costs on appeal will be taxed as provided by R.C.M. 1947, section 93-8606, and if not otherwise provided by the Court in its decision, will automatically be awarded to the successful party against the other party. All costs on appeal shall be claimed as provided by section 93-8621, R.C.M. 1947.

Amendment adopted Court Order effective January 1, 1969.

RULE 33(b) is amended as follows:

RULE 33(b). **Costs of Briefs and Appendices.** The cost of printing or otherwise producing briefs and appendices shall be taxable at rates not higher than specified in Rule 23(g).

Amendment adopted Court Order effective January 1, 1969.

RULE 33(c) is amended as follows:

The present caption to Rule 33(c) **"Costs taxable in the District Court"** is stricken and the following substituted:

RULE 33(c). **Other Costs Taxable.**

Amendment adopted Court Order effective January 1, 1969.

statement, as the appellant or applicant chooses.

In other particulars this rule follows the usual practice among the federal circuits.

Rule 30. Entry and notice of orders and judgments.

(a) ENTRY AND NOTICE. The notation of a judgment or order in the docket constitutes entry thereof. Upon entry of a judgment or order, the clerk shall promptly mail to all parties a copy of the judgment or order, and notice of the date of entry thereof.

Advisory Committee's Note

This rule is patterned after Rule 36 of the Federal Draft. The purpose is to clarify what constitutes an entry of a judgment or order. The provision for mailing by the clerk is for the convenience of the parties but does not affect the time for taking an appeal, which is controlled by Rule 5. As to the entry of judgments, see M. R. Civ. P., Rule 58.

Rule 31. Interest on judgments.

If a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was rendered or made in the district court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the district court, the mandate shall contain instructions with respect to allowance of interest.

Advisory Committee's Note

The language of Rule 37 of the Federal Draft is modified to conform to R. C. M. 1947, section 93-8622.

Rule 32. Damages for appeal without merit.

If the supreme court is satisfied from the record and the presentation of the appeal, that the same was taken without substantial or reasonable grounds, but apparently for purposes of delay only, such damages may be assessed on determination thereof as under the circumstances are deemed proper.

Advisory Committee's Note

The language of Montana Supreme Court Rule XIX is substituted for that of Rule 38 of the Federal Draft.

Rule 33. Costs.

(a) COSTS ON APPEAL. Costs on appeal will be taxed as provided R. C. M. 1947, section 93-8606, and if not otherwise provided by court its decision, will automatically be awarded to the successful party against the other party.

(b) COSTS OF BRIEFS AND APPENDICES. The cost of printing or otherwise producing briefs and appendices shall be taxable in the supreme court at rates not higher than specified in Rule 23(g). A party who desires such costs to be taxed shall state them in a verified bill of costs which he shall file with the clerk, with proof of service, within 14 days after entry of judgment.

(c) COSTS TAXABLE IN THE DISTRICT COURTS. Costs incurred in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve

rights pending appeal, and the fee for filing notice of appeal shall be taxed in the district court as costs of the appeal in favor of the party entitled to costs under this rule.

(d) COSTS IN ORIGINAL PROCEEDINGS. Costs in original proceedings, including reviews other than by appeal, will be taxed as provided by R. C. M. 1947, sections 93-8602, 93-8603, 93-8604 and 93-8611, and if not otherwise provided by the court in its decision, will be awarded to the successful party against the other party; provided, however, that costs awarded to plaintiff or relator in special proceedings to review inferior court rulings, orders or judgments will ordinarily be assessed against the real party in interest, namely, the party interested in upholding the inferior court's action, rather than against the state, county, municipality, subdivision, judge or justice.

(e) UNNECESSARY COSTS. Whenever it appears that the successful party has caused any redundant, useless or unnecessary matter to be incorporated in the record, briefs, or appendices, whether on appeal or in a special proceeding, he shall not recover as part of his costs so much of the expense as is occasioned thereby.

(f) NOTATION BY CLERK. The clerk of the supreme court shall, in all cases, include in the order of judgment of affirmance, reversal or modification on appeal, or for the issuance of a peremptory writ in an original proceeding, and in the remittitur, peremptory writ or judgment, a clause awarding costs taxed in the supreme court in accordance with this rule or the special order of this court, to be recovered after claim and ascertainment or taxation thereof in the manner prescribed by law; and the clerk shall also furnish therewith an itemized statement of such costs as have been paid to him.

Advisory Committee's Note

This rule is a combination of Rule 39 of the Federal Draft and Montana Supreme Court Rule XVIII. With some adjustment of language, subdivision (a) is taken from the Montana Rule; subdivisions (b) and (c) from the Federal Draft; and subdivisions (d), (e) and (f) from the Montana Rule.

Rule 34. Petitions for rehearing.

When, in appeals or special proceedings, it is ordered that remittitur, peremptory writ or judgment issue forthwith, no petition for rehearing will be entertained. In all other cases a petition for rehearing may be filed within 10 days after the decision of the supreme court has been rendered, unless the time is shortened or enlarged by order, and the adverse party shall have 7 days thereafter in which to serve and file his objections thereto. Extensions of time will be granted only upon showing of unusual merit, and in no event in excess of 10 days. A petition for rehearing may be presented upon the following grounds and none other: That some facts, material to the decision, or some question decisive of the case submitted by counsel, was overlooked by the court, or that the decision is in conflict with an express statute or controlling decision to which the attention of the court was not directed. Oral argument in support of the petition will not be permitted. No reply to a petition for rehearing will be received unless requested by the court, but a

RULE 33(f) is amended as follows:

RULE 33(f). **Notation by Clerk.** The Clerk of the Supreme Court shall, in all cases, include in the order of judgment of affirmance, reversal or modification on appeal, or for the issuance of a preemptory writ in an original proceeding, and in the remittitur, preemptory writ or judgment, a clause awarding the costs in accordance with this Rule or the special order of this Court, to be recovered after claim and ascertainment or taxation thereof in the manner prescribed by law; and the Clerk shall also furnish therewith an itemized statement of such costs as have been paid by him.

Amendment adopted Court Order effective January 1, 1969.

Advisory Committee's Note to 1969 Amendment

The amendments to Rule 33(a), (b), (c) and (f) are to make it clear that all costs on appeal are claimed in the court below after remittitur and eliminate the former duplication of cost bills in both the Supreme Court and District Court.

petition for rehearing will ordinarily not be granted in the absence of such a request. Six copies of the petition, produced in accordance with Rule 27(a), shall be filed with the clerk.

Advisory Committee's Note

This rule is patterned in part after Rule 40 of the Federal Draft. However, the first sentence is added from Montana Supreme Court Rule XV, as is the statement of the grounds for the petition and the procedure for serving and filing objections; also the 14 days for filing provided in the Federal Draft has been shortened to conform to state practice, and the number of copies required has been reduced from 25 to 6. The second sentence provides for filing of the petition within 10 days after "the decision of the supreme court has been rendered," rather than after "entry of judgment" as provided by the Federal Draft. The purpose is to avoid uncertainty as to when a judgment has been entered, which might exist under the language of the Federal Draft where the mandate of the supreme court is returned to the district court and there entered.

Rule 35. Notice and copy of decision—Remittitur—Mandate from United States supreme court.

(a) NOTICE AND COPY OF DECISION TO BE FURNISHED. Upon the decision of a cause, notice thereof, together with a copy of the court's written decision, will immediately be mailed to counsel for each party.

(b) REMITTITUR — WHEN ISSUED — WHEN COPY OF OPINION TO ACCOMPANY. Remittitur may, in cases where it is deemed proper, be ordered forthwith; otherwise the same shall be issued promptly upon expiration of time for filing petition for rehearing, or, if such petition is filed, then upon the denial thereof, unless a modification of the decision is made which permits a further petition for rehearing. A copy of the opinion must accompany the remittitur when the judgment or order of the trial court is reversed or modified and the case remanded for further proceedings other than the entry of a final judgment or order terminating the proceedings in the trial court.

(c) MANDATE FROM UNITED STATES SUPREME COURT—PROCEDURE THEREON. Upon receipt by the clerk of the supreme court of Montana of a mandate from the supreme court of the United States in any case at law or in equity theretofore taken from the supreme court of Montana to the supreme court of the United States, it shall be the duty of said clerk forthwith to issue under his hand and the seal of the supreme court of Montana a remittitur to the district court by which the judgment was rendered, commanding such court to take such action in the premises as by the mandate shall be proper, and said remittitur shall also contain therein a recital in haec verba of the said mandate, and all the costs subsequent to the appeal from said district court shall be taxed in such remittitur.

Advisory Committee's Note

This rule incorporates Montana Supreme Court Rules XIV, XXI, and XXII.

Rule 36. Voluntary dismissal.

If the parties to an appeal or other proceeding shall sign and file with the clerk an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the clerk shall enter the case dismissed, and shall give to each party a copy

of the agreement filed; but no mandate or other process shall issue without an order of the court. An appeal may be dismissed on motion of the appellant upon such terms as to costs as may be agreed upon by the parties or fixed by the court. If an appeal has not been docketed the appeal may be dismissed by the court from which the appeal was taken upon the filing in that court of a stipulation for dismissal signed by all parties, or upon motion and notice by the appellant.

Advisory Committee's Note

This rule is taken from Rule 42 of the Federal Draft.

Rule 37. Substitution of parties.

(a) DEATH OF A PARTY. If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the supreme court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the supreme court. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 20. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the supreme court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the supreme court in accordance with this subdivision. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his personal representative, or, if he has no personal representative, by his attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the supreme court in accordance with this subdivision.

(b) SUBSTITUTION FOR OTHER CAUSES. If substitution of a party in the supreme court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subdivision (a).

(c) PUBLIC OFFICERS—DEATH OR SEPARATION FROM OFFICE.

(1) When a public officer is a party to an appeal or other proceeding in the supreme court in his official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding he may be described as a party by his official title rather than by name; but the court may require his name to be added.

Advisory Committee's Note

This rule is taken from Rule 43 of the Federal Draft.

Rule 38. Cases involving constitutional questions where the state is not a party.

It shall be the duty of counsel who challenges the constitutionality of any act of the Montana legislature in any suit or proceeding in the supreme court to which the state of Montana, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, upon the filing of the record to give immediate notice in writing to the court of the existence of said question, specifying the section of the Code or the chapter of the session law to be construed. The clerk shall thereupon certify such fact to the attorney general of the state of Montana.

Advisory Committee's Note

This rule is patterned after Rule 44 of the Federal Draft.

Rule 39. Calendar—Withdrawal of records.

(a) PLACING CAUSES UPON CALENDAR. Thirty days after the appellant's brief has been filed, the cause shall be placed on the calendar as ready for oral argument.

(b) SETTING CAUSES FOR ARGUMENT. As often as found convenient, causes on the calendar will be set for argument by the court in the chronological order in which they have been placed on the calendar, except such causes as are determined entitled to precedence or as otherwise ordered by the court. Oral arguments will not be heard during the months of July and August.

(c) ADVANCEMENT OF CAUSES. Appeals from orders dissolving, refusing to dissolve, granting or refusing to grant writs of injunction, appeals from orders dissolving or refusing to dissolve attachments, appeals from orders appointing or refusing to appoint receivers, appeals from orders or judgments holding appellant in custody, and workmen's compensation appeals, are entitled to precedence and will, upon motion of either party, be advanced on the calendar.

(d) PERMISSION TO TAKE RECORD FROM CLERK'S OFFICE. The records and other papers of the supreme court shall not be taken therefrom except by counsel pursuant to a written order of a justice of the court, which order shall specify the time the same may be retained out of the clerk's office; provided, that the court or a justice thereof may require the same to be returned within a shorter period upon notice. The clerk shall preserve each order and counsel's receipt until the papers therein mentioned shall be returned.

Advisory Committee's Note

Montana Supreme Court Rules XIII and XVI have been substituted for the provisions of Rule 45 of the Federal Draft.

Rule 40. Appeals from injunction orders.

Upon appeal from an order dissolving or refusing an injunction, if the appellant desires to continue in force the injunction order dissolved by the district court, or to obtain such injunction order pending the appeal, he shall apply to the district court under Rule 62 of the Montana

Rules of Civil Procedure. In the event the relief there requested be not granted he may file in the supreme court his sworn application, setting forth the proceedings appealed from and the relief desired, and present with it to the supreme court, a verified copy of the affidavits or evidence used on the hearing in the district court. Such application will be heard ex parte and without argument, and the court, upon such record will make such order in the premises as may be proper.

Advisory Committee's Note

This rule incorporates the substance of Supreme Court Rule XXIII, as amended effective April 3, 1963.

Rule 41. Statutes and rules amended.

[This rule amended Rule 72 of the Montana Rules of Civil Procedure, and R. C. M. 1947, sections 93-5708, 93-8001, 93-8002, 93-8013 and 93-9905, subdivision 3. For text of amendments see the designated sections.]

Rule 42. Applicability in general.

(a) SPECIAL STATUTORY PROCEEDINGS. The statutory proceedings listed in Table A of the Montana Rules of Civil Procedure and any other special statutory proceedings, whether or not listed in said Table A, are excepted from these rules in so far as they are inconsistent or in conflict with the procedure and practice provided by these rules.

(b) APPEALS TO DISTRICT COURTS. These rules do not supersede the provisions of statutes relating to appeals to or review by the district courts, which shall govern procedure and practice relating thereto in so far as they are not inconsistent with these rules.

(c) RULES INCORPORATED INTO STATUTES. Where any statute heretofore or hereafter enacted, whether or not applicable to a special statutory proceeding or listed in any table appended hereto, provides that any act in a civil proceeding in a district court or in the Montana supreme court shall be done in the manner provided by law or as in a civil action or as provided by any statute superseded by these rules, such act shall be done in accordance with these rules and the procedure thereon shall conform to these rules, in so far as practicable.

Advisory Committee's Note

This Proposed Rule is patterned after Rule 81 of the Montana Rules of Civil Procedure. It excepts inconsistent special statutory proceedings and appeals to and reviews by the district courts to the extent that they are governed by inconsistent statutes and it is impracticable to incorporate procedures provided by these rules. But statutes such as sections 93-9302, 93-9303, 93-9718, 93-9719, and 93-9922, which contain catch-all references to the applicability of statutes which have been superseded, are brought into line with these rules in so far as practicable.

Rule 43. Title—Effective date—Statutes superseded.

(a) TITLE. These Rules shall be known as the Montana Rules of Appellate Civil Procedure and may be cited as M. R. App. Civ. P.

(b) EFFECTIVE DATE AND APPLICATION TO PENDING PROCEEDINGS. These rules will take effect on January 1, 1966. They govern all appeals and original proceedings brought after they take

effect, and also all further proceedings in appeals and original proceedings then pending, except to the extent that in the opinion of the supreme court their application in a particular appeal or original proceeding pending when the rules take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the appeal or original proceeding was brought applies.

(c) STATUTES AND RULES SUPERSEDED. Upon the taking effect of these rules all statutes and rules, and parts thereof, in conflict herewith, and the statutes and rules listed in Tables A, B, and C, in so far as they relate to civil proceedings, are superseded in respect of practice and procedure on appeals from the district courts to the supreme court and in original proceedings brought in the supreme court.

Advisory Committee's Note

This rule incorporates provisions similar to those contained in Rules 85 and 86 of the Montana Rules of Civil Procedure. Subdivision (c) refers to statutes and rules only in so far as they relate to civil proceedings, to make it clear that criminal proceedings are in no way affected by these rules.

Appendix of Forms.

Form 1.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE STATE OF MONTANA FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

IN THE DISTRICT COURT OF THE ..... JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF .....

A. B.		Plaintiff	Notice of Appeal
	vs.		
C. D.		Defendant	

Notice is hereby given that C. D., defendant above-named, hereby appeals to the supreme court of the state of Montana (from the final judgment) (from the order (describing it)) entered in this action on the .....day of ....., 19.....

(S) .....

.....

Attorney for C. D.
(Address)

Form 2.

AFFIDAVIT TO ACCOMPANY MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

IN THE DISTRICT COURT OF THE ..... JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF .....

A. B.		Plaintiff	AFFIDAVIT IN SUPPORT OF APPLICATION TO PROCEED ON APPEAL WITHOUT PREPAYMENT OF COSTS
	vs.		
C. D.		Defendant	

I, ..., being first duly sworn, depose and say that I am the ..... in the above-entitled case; that in support of my application to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

.....

.....

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?
   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.
   b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.
2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?
   a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.
3. Do you own any cash or checking or savings account?
   a. If the answer is yes, state the total value of the items owned.
4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?
   a. If the answer is yes, describe the property and state its approximate value.
5. List the persons who are dependent upon you for support and state your relationship to those persons.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

.....

Subscribed and Sworn to before me this ..... day of ....., 19 .....

.....
Notary Public

Let the applicant proceed without prepayment of costs.

.....
District Judge

Table A. List of Statutes and Rules Superseded or Amended.

Statutes Superseded (R. C. M. 1947, sections)	R.S.C.M.* Superseded, except as applicable to criminal procedure Rule	M.R.Civ. P.** Rule Superseded
93-5501		62(a)
93-5503		62(d)
93-5504		Amended
93-5505	I	72
93-5506	II	
93-5507	III (1st par.)	
93-5508	IV	
93-5509	VI	
93-5607	VII	
93-5608	VIII	
93-5702	IX	
93-5707	X	
93-8003	XI	
93-8004	XII	
93-8005	XIII	
93-8006	XIV	
93-8011	XV	
93-8012	XVI	
93-8014	XVII	
93-8015	XVIII	
93-8016	XIX	
93-8017	XXI	
93-8018	XXII	
93-8019	XXIII	
93-8020	XXIV	
93-8021		
93-8022		
93-8023		
93-8024		
93-8025		
Amended		
93-5708		
93-8001		
93-8002		
93-8013		
93-9905(3)		

* Rules of the Supreme Court of Montana.

** Montana Rules of Civil Procedure.

Table B. List of Rules of Appellate Civil Procedure Superseding, in Whole or in Part, or Amending, Statutes and Rules.

M. R. App. Civ. P.* Rule	Statutes and Rules** Superseded or Amended (R. C. M. 1947, sections)
1	93-8001, 93-8002, 93-8003, 93-8017
2	93-8022
3	93-8019, R. S. C. M. XXIV
4	93-8005, 93-8019
5	93-8004
6	93-8005, 93-8006, 93-8012, 93-8015, 93-8019
7	93-5607, 93-8011, 93-8012, 93-8014, M. R. Civ. P. 62(a), 62(d)
8	93-8013
9, 10, and 25	93-5504 to 93-5509, incl., 93-5608, 93-5707, 93-8018, 93-8019, 93-8021 R. S. C. M. VII, VIII, IX, XVIII subd. 3
11	93-8019, R. S. C. M. VI
12	93-8020
13	93-8016
14	93-8023
15	93-8024
16	93-8025
17	R. S. C. M. IV
19	R. S. C. M. I
20	R. S. C. M. III (1st par.)
22	R. S. C. M. XI
23	R. S. C. M. X
26	R. S. C. M. II subd. 4, III (1st par.)
27	R. S. C. M. II
29	93-5702, R. S. C. M. XII
32	R. S. C. M. XIX
33	R. S. C. M. XVIII
34	R. S. C. M. XV
35	R. S. C. M. XIV, XXI, XXII
37	R. S. C. M. XVII
39	R. S. C. M. XIII, XVI
40	R. S. C. M. XXIII
41	M. R. Civ. P. 72, 93-5708, 93-9905 (3), 93-8001, 93-8002, 93-8013

* Montana Rules of Appellate Civil Procedure are abbreviated "M. R. App. Civ. P."

** Rules of the Supreme Court of Montana are abbreviated "R. S. C. M." Montana Rules of Civil Procedure are abbreviated "M. R. Civ. P."

Table C. List of Statutes and Rules Superseded, in Whole or in Part, or Amended, by Designated Rules of Appellate Civil Procedure.

Statutes (R. C. M. 1947, sections)	M. R. App. Civ. P. Rule
93-5504 to 93-5509, incl.	9, 10, 25
93-5607	7
93-5608	9, 10, 25
93-5702	29
93-5707	9, 10, 25
93-5708	41
93-8001	1, 41
93-8002	1, 41
93-8003	1
93-8004	5
93-8005	4, 6
93-8006	6
93-8011	7
93-8012	6, 7
93-8013	8, 41
93-8014	7
93-8015	6
93-8016	13
93-8017	1
93-8018	9, 10, 25
93-8019	4, 6, 9, 10, 11, 25
93-8020	12
93-8021	9, 10, 25
93-8022	2
93-8023	14
93-8024	15
93-8025	16
93-9905 (3)	41

Rules of the Supreme Court of Montana	
I	19
II	26, 27
III (1st par.)	20, 26
IV	17
VI	11
VII	9, 10, 25
VIII	9, 10, 25
IX	9, 10, 25
X	23
XI	22
XII	29
XIII	39

XIV 35
XV 34
XVI 39
XVII 37
XVIII 9, 10, 25, 33
XIX 32
XXI 35
XXII 35
XXIII 40
XXIV 3

Montana Rules of
Civil Procedure

62(a) 7
62(d) 7
72 41

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REVISED CODES OF MONTANA

VOLUME 8

1967 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING THE PARENT VOLUME THROUGH VOLUME 420, PACIFIC REPORTER (2ND SERIES)

Edited by

A. WAYNE GUERNSEY, A.B., LL.B.

and

THE PUBLISHERS' EDITORIAL STAFF

Editorial Supervisor

WESLEY W. WERTZ

FOR NEW MONTANA CODE OF CRIMINAL PROCEDURE, TITLE 95, SEE SEPARATE PAMPHLET

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NEW LAWS IN VOLUME 8

For index see pocket supplement to Replacement Volume 9

ENACTED IN 1949

Endurance horse races prohibited, 94-35-258, 94-35-259.
Intoxicating liquors, sale to minors, 94-35-106, 94-35-106.1.
Slot machines prohibited, 94-2429 to 94-2432.
State tax stamps, failure to affix or cancel, removal, counterfeiting, 94-35-260.

ENACTED IN 1951

Political pamphlets required to contain name of publisher, 94-1475, 94-1476.
Sodomy, when child not an accomplice, 94-4120.
Subversive organizations, 94-4411 to 94-4427.

ENACTED IN 1953

Altering, defacing, or removing serial numbers on farm machinery, importing, selling, 94-35-261 to 94-35-263.
Furnishing certain articles to prisoners in state prison, 94-35-264.

ENACTED IN 1955

Abandonment of ice boxes, 94-35-265.
Hunting in careless or reckless manner, 94-35-269.
Presentence investigation and sentences of the court, 94-7831 to 94-7834.
Probation, Parole and Executive Clemency Act, 94-9821 to 94-9851.

ENACTED IN 1957

Delivery of toxic grains to public warehouse, 94-35-270, 94-35-271.
Guaranteed arrest bond certificates in lieu of cash bail, 94-8508 to 94-8510.
Minors, possession of beer or liquor, 94-35-106.2.
Switch blade knife, 94-35-273.
Unlawful operation or use of aircraft, 94-35-272.

ENACTED IN 1959

Coloration of wheat, oats, rye or barley treated with injurious substance, 94-35-271.1 to 94-35-271.3.
Disqualification of judge in criminal proceeding, 94-6913.
False representation to induce employment as advertising agency for sale of real property, 94-1822.
Roadblocks on highways, establishing, 94-6029 to 94-6033.
Sentences for misdemeanors, confinement with parole during employment hours, 94-7835 to 94-7841.
Western interstate corrections compact, 94-8019 to 94-8023.

ENACTED IN 1961

Fines collected from juvenile offenders in motor vehicle cases, 94-801-2.
Indictment, information, accusation or complaint charging more than one offense, 94-6407.1.
Prisoners, offenses by,
    Hostages, holding, 94-2604.
    Sentence for offense committed while prisoner, commencement, 94-4716.1.
    Weapons, possession, 94-3527.1.
Telephones and party lines, misuse, 94-35-221.1 to 94-35-221.4.

NEW LAWS IN VOLUME 8 (Continued)

ENACTED IN 1963

Criminal law study commission, 94-1001-1 to 94-1001-11.
Interstate agreement on detainers, 94-1101-1 to 94-1101-6.
Telephone, telegraph and electric facilities, protection, 94-3211.

ENACTED IN 1965

Credit device violations, 94-1823 to 94-1830.
Recording of conversation without knowledge of parties, 94-35-274, 94-35-275.
Stolen livestock, possession as evidence of larceny, 94-2704.1.

ENACTED IN 1967

Accommodations, fraudulently obtaining, 94-1831.
Identification cards, false procurement, 94-2014.
Montana Code of Criminal Procedure, Title 95—See separate pamphlet.
Telephone misuse, 94-35-221.5, 94-35-221.6.

AMENDMENTS IN VOLUME 8

Abandonment and nonsupport, 94-301, 94-304.
Assault in second degree, 94-602.
Attorney for accused, compensation, 94-6513.
Bail forfeiture, 94-8704.
Burglary, 94-901, 94-904.
Civil rights of convicts, 94-4720.
Coroner's inquests, 94-201-6.
Cruelty to animals, 94-1201.
Demurrer, grounds for, 94-6703.
Ditch overflowing highway, 94-3565.
False pretenses, 94-1805.
Fines and forfeitures, disposition, 94-801-1.
Firearms, use by children, 94-3579.
Forfeiture of vehicles used to transport stolen livestock, 94-35-204.
Fraudulent checks, 94-2702.
Hotels and places of accommodation, defrauding, 94-3550.
Infamous crime against nature, 94-4120.
Injury to trees on public lands, 94-3334.
Lewd and lascivious acts upon children, 94-4106.
Malicious injury to property, 94-3202, 94-3203.
Mescal button, dispensing, 94-35-123.
Nuisances, 94-1002.
Obscene articles, 94-3601, 94-3602, 94-3604 to 94-3606.
Privileged communications, newspapers, radio or television, 94-2807.
Proceedings on plea of guilty or on conviction, 94-100-25.
State director of probation and parole, 94-9825.
Suspension of sentence, 94-7821, 94-7822, 94-7824.
Trusts and monopolies, penalty, 94-1104.
Witnesses from without state, 94-9003.

MONTANA REVISED CODES

TITLE 94—CRIMES AND CRIMINAL PROCEDURE

Chapter 3. Abandonment and neglect of wife and children, 94-301, 94-304.
6. Assaults, 94-602.
9. Burglary and housebreaking—possession of burglarious instruments and deadly weapons, 94-901, 94-904.
10. Common nuisances—maintenance in connection with selling intoxicating liquors—opium—prostitution and gambling, 94-1002.
11. Criminal conspiracy and illegal practices in restraint of trade—trusts—discriminations—pooling grain warehouses—destroying food, 94-1104.
12. Cruelty to animals, 94-1201.
14. Election frauds and offenses—Corrupt Practices Act, 94-1475, 94-1476.
18. False personation and cheats, 94-1805, 94-1822 to 94-1831.
20. Forgery and counterfeiting, 94-2014.
24. Gambling, 94-2429 to 94-2432.
26. Kidnaping, 94-2604.
27. Larceny and falsification of public records and jury lists, 94-2702, 94-2704.1.
28. Libel, 94-2807.
32. Malicious injuries to railroads, highways and other property, 94-3202, 94-3203, 94-3211.
33. Malicious mischief generally, 94-3334.
35. Miscellaneous offenses, 94-3527.1, 94-3565, 94-3579, 94-35-106 to 94-35-106.2, 94-35-123, 94-35-204, 94-35-221.1 to 94-35-221.6, 94-35-258 to 94-35-265, 94-35-269 to 94-35-275.
36. Obscenity—literature—indecent exposure—houses of ill fame—prohibition of certain advertisements, 94-3601, 94-3602, 94-3604 to 94-3606.
41. Rape and other sexual crimes, 94-4106, 94-4120.
44. Sedition—criminal syndicalism—display of red flag—subversive organizations, 94-4411 to 94-4427.
47. Punishments—attempts and other general provisions, 94-4716.1, 94-4720.
60. Arrests—by whom and how made—close pursuit—retaking after escape, 94-6029 to 94-6033.
64. Rules of pleading and form of information and indictment, 94-6407.1.
65. Arraignment of defendant, 94-6513.
67. Demurrer, 94-6703.
69. Change of place of trial or judge, 94-6913.
78. Judgment—suspension of sentence and probation, 94-7821, 94-7822, 94-7824, 94-7831 to 94-7841.
80. The execution, 94-8019 to 94-8023.
85. Bail on indictment or information before conviction, 94-8508 to 94-8510.
87. Surrender of defendant—forfeiture of bail—recommitment of defendant, 94-8704.
90. Witnesses from without state—how secured in criminal proceedings, 94-9003.
98. Probation, parole and clemency, 94-9821 to 94-9851.
100. Justices' and police court proceedings—appeals, 94-100-25.
201. Coroner's inquests, 94-201-6.
801. Fines and forfeitures—disposal of, 94-801-1, 94-801-2.
901. Reciprocal enforcement of support, Repealed—Section 3, Chapter 208, Laws of 1961.
1001. Criminal law study commission, 94-1001-1 to 94-1001-11.
1101. Interstate agreement on detainers, 94-1101-1 to 94-1101-6.

CHAPTER 1—DEFINITIONS AND PRELIMINARY PROVISIONS

94-101. (10710) **Construction of penal statutes.**

References

Petition of Cheadle, 143 M 327, 389 P 2d 579; Petition of Kelly, 146 M 484, 408 P 2d 478.

94-102. (10711) Provisions similar to existing laws, how construed.

Amendment Increasing Punishment

Where the effect of the amendment of a statute is only to increase the prescribed punishment, the unchanged portion of the statute remains in effect. State v. Cline, 135 M 372, 339 P 2d 657.

94-105. (10714) What intent to defraud is sufficient.

General Intent

The effect of this section is to make any required "intent to defraud" a general, rather than a specific, intent. State v. Cooper, 146 M 336, 406 P 2d 691.

References

Cited in State v. Harmon, 135 M 227, 340 P 2d 128.

94-107. (10716) Proceedings to impeach or remove officers, etc.

References

Cited in State ex rel. Bonner v. District Court, 122 M 464, 206 P 2d 166, 171.

94-114. (10723) Felony and misdemeanor defined.

Concurrent Sentences

Where defendant was convicted of a felony under the first portion of a consolidated information and of a misdemeanor under the second portion and the trial court adjudged that the sentences be served concurrently, the sentence for the felony should be served in the state prison and credit for the misdemeanor fine should be given at the same time, and any remaining time under the misdemeanor at the end of the state prison term should be served in the county jail. State v. Bogue, 142 M 459, 384 P 2d 749.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 856.

94-116. (10725) Punishment of misdemeanor, etc.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 856.

94-117. (10726) To constitute crime there must be unity of act, etc.

Criminal Negligence

Insofar as the offense of involuntary manslaughter is concerned under section 94-2507, the proof of culpability is supplied by evidence of criminal negligence. State v. Strobel, 130 M 442, 304 P 2d 606, 617, overruled on another point, 134 M 519, 525, 333 P 2d 1017, 1021.

It is wholly unnecessary in involuntary manslaughter cases to superimpose upon the requirement of the element of criminal negligence the further requirement that a determination must be made as to whether the act resulting in death might ordinarily be classified as malum in se or merely malum prohibitum, for, if that act is done in a manner which is criminally negligent, it thereby becomes malum in se and thereby includes the element of mens rea. State v. Strobel, 130 M 442, 304 P 2d 606, 617, overruled on another point, 134 M 519, 525, 333 P 2d 1017, 1021.

Under a prosecution for involuntary manslaughter, irrespective of the character of the unlawful act, whether malum in se or merely malum prohibitum, the criminality of the act resulting in death is established if that act was done negligently in such a manner as to evince a disregard for human life or an indifference to consequences. State v. Strobel, 130 M 442, 304 P 2d 606, 617, overruled on another point, 134 M 519, 525, 333 P 2d 1017, 1021.

Involuntary Manslaughter

Wilful or evil intent is not an element of involuntary manslaughter. State v. Pankow, 134 M 519, 333 P 2d 1017, 1021.

References

State v. Holdren, 143 M 103, 387 P 2d 446.

94-118. (10727) Intent, how manifested, and who considered, etc.

Intent to Defraud

Proof of intent to defraud may consist of reasonable inferences drawn from affirmatively established facts, and where defendant was sufficiently conscious at the time to recognize the fraudulent nature of the check he was of adequate mental ability to form an intent to defraud by utter-

ing the check knowing of its fraudulent nature. State v. Cooper, 146 M 336, 406 P 2d 691.

References

State v. Holdren, 143 M 103, 387 P 2d 446; Silloway v. Jorgenson, 146 M 307, 406 P 2d 167.

94-119. (10728) Drunkenness no excuse for crime, etc.

Cross-References

Competency of accused, mental disease or defect excluding responsibility as affirmative defense, sec. 95-503.

Intoxication

While voluntary intoxication is generally no defense to a criminal charge, it may be a defense where a specific intent is an essential element of the crime charged. Alden v. State, 234 F Supp 661, 672, affirmed in 345 F 2d 530.

References

Cited or applied in State v. Quinlan, 126 M 52, 244 P 2d 1058, 1062 (dissenting opinion); State v. Zumwalt, 129 M 529, 291 P 2d 257, 261.

CHAPTER 2—PERSONS LIABLE TO PUNISHMENT—PARTIES TO CRIME

94-201. (10729) Who are capable of committing crimes.

Cross-References

Competency of accused, mental disease or defect excluding responsibility, sec. 95-501.

Instructions

Refusal to give instruction under subd. 6 of this section was not reversible error in view of other instructions given. State v. Allison, 122 M 120, 199 P 2d 279, 289.

References

Cited or applied in State v. Quinlan, 126 M 52, 244 P 2d 1058, 1062 (dissenting opinion); State v. Smith, 126 M 124, 246 P 2d 227, 228.

94-204. (10732) Who are principals.

"Accomplice" Defined

An accomplice is one who knowingly, voluntarily, and with common intent with the principal offender unites in the commission of a crime. State v. Harmon, 135 M 227, 340 P 2d 128.

Aiding and Abetting

While the statute defines larceny as the taking of property from the person of another yet it is sufficient to show the defendant's guilt that he aided or abetted in the commission of the crime. State v. Maciel, 130 M 569, 305 P 2d 335, 336.

Conspiracy

A coconspirator may be found guilty of a crime committed by his fellow conspirator whether the fellow conspirator is alive or dead, competent or incompetent, at the time of his trial. State v. Alton, 139 M 479, 365 P 2d 527, 535.

All participants in a conspiracy may be found guilty of any of the degrees of murder or one or more may be found guilty of each degree. State v. Alton, 139 M 479, 365 P 2d 527, 538.

All parties to a conspiracy are guilty whether their part in the conspiracy is large or small, and whether or not that part is to be carried out at a distance from the other conspirators. State v. Alton, 139 M 479, 365 P 2d 527, 538.

Felony Murder Rule

Where defendant hired two men to set fire and burn his service station, and during the course of the arson the two men were burned and subsequently died, the defendant was guilty of first degree murder under the felony murder rule since any death directly attributable to a plot to commit arson makes all the conspirators in the arson plot equally guilty of first degree murder. State v. Morran, 131 M 17, 306 P 2d 679.

Injury to Perpetrator of Crime

A bartender who worked after hours for the sole purpose of making illegal sales of liquor and signaling prostitutes as to the arrival of prospective customers was in pari delicto and could not recover from his employer for an injury received during such employment. Lencioni v. Long, 139 M 135, 361 P 2d 455.

Instructions

Where a verbal declaration of one codefendant that he and the other codefendant were partners was given in evidence, it was error for the court to refuse defendant's instruction that such verbal declaration is insufficient to establish a partnership. Although a partnership was immaterial because of this section and section 94-6423, yet the jury may have

given full consideration to the declaration and found defendant guilty on the strength thereof. State v. Keller, 126 M 142, 246 P 2d 817, 821.

Kidnaping

Defendant was guilty of confining prison guard secretly against his will in violation of section 94-2602 where the evidence showed that defendant, an inmate of the state prison, walked behind prison guard with a knife, after another inmate had disarmed the guard, until the inmates had placed the guard in isolation. State v. Frodsham, 139 M 222, 362 P 2d 413, 419.

Operation and Effect

Under this section and section 94-6423, evidence was sufficient to sustain a conviction of assault in the second degree where defendant was at the scene of the crime and was admittedly a participant therein; it is not necessary to show that he actually fired any one of the guns. State v. Simon, 126 M 218, 247 P 2d 481, 484.

References

Cited or applied in State v. Phillips, 127 M 381, 264 P 2d 1009, 1015.

CHAPTER 3—ABANDONMENT AND NEGLECT OF WIFE AND CHILDREN

Section 94-301. Abandonment or failure to support wife—penalty for.
94-304. Desertion or abandonment of child or ward a felony—suspension of sentence, when.

94-301. (11017) **Abandonment or failure to support wife—penalty for.** Every person, having sufficient ability to provide for his wife's support, or who is able to earn the means for such wife's support, who wilfully abandons and leaves his wife in a destitute condition, or who refuses or neglects to provide such wife with necessary food, clothing, shelter or medical attendance, unless in the judgment of the court or jury he is justified in abandoning her by her misconduct, shall be guilty of a misdemeanor.

History: En. Sec. 470, Pen. C. 1895; re-en. Sec. 8345, Rev. C. 1907; amd. Sec. 1, Ch. 77, L. 1917; re-en. Sec. 11017, R. C. M. 1921; amd. Sec. 1, Ch. 179, L. 1963. Cal. Pen. C. Sec. 270.

Amendment

The 1963 amendment deleted language which appeared near the beginning of the section and read, "who: 1. Having any child under the age of sixteen years, dependent upon him or her for care, education or support, wilfully omits, without lawful excuse, to furnish necessary food, clothing, shelter or medical attention for his or her child or children, or ward or wards; or"; and made minor changes in style and arrangement.

References

Cited or applied in State v. McBane, 128 M 369, 275 P 2d 218, 221.

94-302. (11018) **Orders which may be entered by the court.**

Cross-Reference

Enforcement of support orders of other states, secs. 93-2601-1 to 93-2601-40.

References

Cited or applied in State v. McBane, 128 M 369, 275 P 2d 218, 219, 221.

94-304. (11020) **Desertion or abandonment of child or ward a felony—suspension of sentence, when.** Any person who has a child or ward under the age of sixteen (16) years who is dependent upon him or her for care or support shall not:

(1) Desert or abandon such child or ward without providing necessary and proper shelter, food, clothing and medical care for such child or ward; or

(2) Wilfully omit, without lawful excuse, to provide necessary and proper shelter, food, clothing and medical care for such child or ward.

A person who violates this section is guilty of a felony and shall, upon conviction, be punished by imprisonment for not less than one (1) year

nor more than five (5) years in the state prison. The court may suspend such sentence if the defendant shall furnish a bond in such penal sum, and with such surety or sureties as the court may fix, conditioned that he will furnish his child or ward with necessary and proper shelter, food, care, and clothing. In case of failure to comply with the conditions of such bond, the court may order such person to appear before the court and show cause why sentence should not be imposed, whereupon the court may pass sentence or may modify the order and take a new bond and further suspend sentence as may be just and proper. The judge may declare a bond forfeited and may, in his discretion, order the face amount of such bond used to support the persons deserted, abandoned or neglected.

History: En. Sec. 471, Pen. C. 1895; amd. Sec. 1, Ch. 6, L. 1905; re-en. Sec. 8346, Rev. C. 1907; amd. Sec. 1, Ch. 68, L. 1917; re-en. Sec. 11020, R. C. M. 1921; amd. Sec. 2, Ch. 179, L. 1963. Cal. Pen. C. Sec. 270b.

Amendment

The 1963 amendment substantially rewrote this section. For previous text, see parent volume.

Change of Plea of Guilty

Where defendant was charged with desertion of minor children and upon arraignment the defendant indicated that he wanted to plead guilty and court read him this section making it a felony to desert and abandon children under 15 years of age, and also sections 94-301 and 94-302 which make it a misdemeanor to omit without lawful excuse to furnish necessary board, clothing, shelter or medical attention to children under the age of 16 years, the court abused its discretion in refusing to grant the defendant's motion to change his plea of guilty since there was a misunderstanding as to what the defendant pleaded guilty. State v. McBane, 128 M 369, 275 P 2d 218. (Dissenting opinion, 128 M 369, 275 P 2d 218, 222.)

94-306. (11022) Cruelty to children.

Collateral References

Failure to provide medical attention for child as criminal negligence. 12 ALR 2d 1047.

CHAPTER 4—ABORTION

94-401. (11023) Administering drugs, etc., with intent to, etc.

Collateral References

Admissibility of evidence of commission of similar crimes in prosecution based on abortion. 15 ALR 2d 1080.

Necessity, to warrant conviction of abortion, that fetus be living at time of commission of acts. 16 ALR 2d 949.

CHAPTER 6—ASSAULTS

Section 94-602. Assault in second degree.

94-601. (10976) Assault in the first degree defined—penalty.

Criminal Intent

The element of felonious intent in every contested criminal case must necessarily be determined from the facts and circumstances of the particular case, this for the reason that criminal intent, being a state of mind, is rarely susceptible of direct or positive proof and therefore must usually be inferred from the facts testified to by witnesses and the circumstances as developed by the evidence. State v. Madden, 128 M 408, 276 P 2d 974, 978.

Operation and Effect

In a prosecution for assault in the first or second degree the prosecution had to prove by satisfactory evidence, that when the defendant pointed a gun at a person he intended to commit a felony upon that person; instructions defining the felony must be given to the jury so that the jury can determine if the evidence showed such intended felony. State v. Quinlan, 126 M 52, 244 P 2d 1058, 1059 (the court was not in agreement on this however, see the dissenting opinions of two judges on pages 1060, 1063).

Penalty

Defendant charged with assault in first degree was properly sentenced to state prison for 18 years which was within the

statutory term for the offense of which the jury found him guilty and during trial on first day of assault charge he pleaded guilty to three prior felony convictions charged in same information charging assault in first degree. State v. McLeod, 131 M 478, 311 P 2d 400, 408.

Sufficiency of Information

Trial court did not err in overruling defendant's demurrer to amended information and in overruling his objection to the introduction of evidence and his motion to dismiss the information, where the amended information complied with the requirements of sections 94-6401, 94-6403 to 94-6405 and 94-6412. State v. McLeod, 131 M 478, 311 P 2d 400, 406.

References

Cited or applied in State v. Smith, 126 M 124, 246 P 2d 227, 228.

Collateral References

Indecent proposal to woman as criminal assault. 12 ALR 2d 971.

94-602. (10977) **Assault in second degree.** Every person who, under circumstances not amounting to the offense specified in the last section:

(1) With intent to injure unlawfully, administers to, or causes to be administered to, or taken by another, poison, or any other destructive or noxious thing, or any drug or medicine, the use of which is dangerous to life or health; or,

(2) With intent thereby to enable or assist himself, or any other person, to commit any crime, administers to, or causes to be administered to, or taken, by another, chloroform, ether, laudanum, or any other intoxicating narcotic, or anesthetic agent; or,

(3) Wilfully or wrongfully wounds or inflicts grievous bodily harm upon another, either with or without a weapon; or,

(4) Wilfully and wrongfully assaults another by the use of a weapon, or other instrument or thing likely to produce grievous bodily harm; or,

(5) Assaults another with intent to commit a felony, or to prevent or resist the execution of any lawful process or mandate of any court or officer, or the lawful apprehension or detention of himself, or of any other person,

is guilty of an assault in the second degree, and is punishable by imprisonment in the state prison for not less than one nor more than six years, or by a fine not exceeding two thousand dollars, or both.

History: En. Sec. 401, Pen. C. 1895; re-en. Sec. 8313, Rev. C. 1907; re-en. Sec. 10977, R. C. M. 1921; amd. Sec. 1, Ch. 129, L. 1961. Cal. Pen. C. Secs. 216, 222, and 245.

Amendment

The 1961 amendment increased the maximum term of imprisonment from five to six years.

Instructions on This Section

Instructions defining the felony intended to be committed must be given to the jury in a prosecution of assault in the first or second degree so that the jury may determine if the evidence showed an intended felony. State v. Quinlan, 126 M 52, 244 P 2d 1058, 1059.

Subd. 4

Operation and Effect

Evidence was insufficient to justify a conviction of second degree assault with a deadly weapon where it was disclosed that the defendant was hunting jack rabbits at the time; that he never knew the prosecuting witness prior to the day of the alleged assault; that the rifle was extremely sensitive and would fire upon being brushed against an object such as clothing or even a change in temperature might fire the gun; and that the defendant was an instructor in firearms in the army during the war and would not have missed from the distance of eight feet had he been aiming at the prosecuting witness. State v. Smith, 126 M 124, 246 P 2d 227, 228.

Evidence was sufficient to justify a conviction under this section when it was shown that defendant was with a group of boys who fired a barrage of shots at a house and some of the pellets hit the house; the fact that the prosecuting witness had moved to a position away from the line of fire did not prevent the attack from being an assault upon him and sus-

tained the charge that the guns were fired toward him and in his direction. State v. Simon, 126 M 218, 247 P 2d 481, 482, 483, 484.

Proof of Offense Different Than That Charged

Where defendant was charged with assault in the second degree as defined in subd. 4, it was error to introduce evidence that the defendant in pointing the firearm was resisting a lawful arrest by the sheriff in violation of subd. 5. State v. Storm, 124 M 102, 220 P 2d 674, 675.

Specific Intent

Specific intent needs to be proved in second degree assault charges only under subdivisions 1, 2 and 5 of this section. State v. Straight, 136 M 255, 347 P 2d 482, 487.

Sufficiency of Evidence

Where evidence did not show that defendant pointed gun at sheriff after he was handed paper by deputy which purported to be a warrant, evidence was insufficient to support a conviction under either subd. 4 or 5 of this section. State v. Storm, 124 M 102, 220 P 2d 674, 678.

Sufficiency of Information

Information charging defendant with unlawfully threatening another by pointing a loaded revolver at him charged a criminal offense. State v. Storm, 124 M 102, 220 P 2d 674, 675.

An information charging that the defendant committed the crime of assault in the second degree by wilfully, wrongfully, unlawfully, and feloniously assaulting a human being by wounding and inflicting grievous bodily harm contrary to the form, force and effect of the statute, was sufficient to let the defendant know specifically the crime with which he was charged. State v. Straight, 136 M 255, 347 P 2d 482, 486.

Even though, in an information charging second degree assault, it was not charged specifically that a belt was used in the assault, admission of evidence that a belt was used was not error. State v. Straight, 136 M 255, 347 P 2d 482, 487.

Denial of state's second application for leave to file information charging assault on ground that probable cause was not shown was an abuse of discretion where supplementary proof as to probable cause in the form of affidavits of deputy county attorney and six witnesses and copy of police report were filed, the district court, in denying first application for failure to have witnesses endorsed thereon having commented that probable cause existed. State ex rel. McLatchy v. District Court, 144 M 216, 395 P 2d 245, 248.

While mere recital of injuries was not medically precise or overwhelmingly persuasive, but did show that injuries had been inflicted and that doctor, who was to testify at trial, had examined the victim, there was sufficient evidence stated in the information to establish probable cause that a second degree assault had been committed. State ex rel. Pinsoneault v. District Court, 145 M 233, 400 P 2d 269.

Under section 94-6423 information containing single count charging the crime of second degree assault was proper where only one crime was involved, namely, second degree assault, with at least two different ways of committing that crime; one by a direct assault and the other by aiding and abetting. State v. Zadick, — M —, 419 P 2d 749, 751.

References

Cited or applied in State ex rel. Neilson v. District Court, 128 M 445, 277 P 2d 536, 539.

94-603. (10978) Assault in third degree.

Instructions

It was error to refuse defendant's instructions defining assault in the third degree, and instead instructing the jury as to assault in the first and second degree but omitting any instructions defining what felony was intended to be committed by assaulting a person with a gun. Since the jury had no way of knowing what felony, if any, the defendant intended to commit upon a person by pointing a gun at him, the jury should have been allowed to consider whether or not defendant was guilty of third degree assault. State v. Quinlan, 126 M 52, 244 P 2d 1058, 1059.

94-605. (10980) Use of force not unlawful.

Subd. 3

Operation and Effect

Evidence failed to justify a conviction of assault with a deadly weapon when it was shown that the defendant was merely exercising force in defense of his home, inasmuch as the prosecuting witness came to defendant's cabin in the company of another fellow who had intruded in defendant's home and lived there without defendant's permission and who the defendant had to forcibly evict, and also someone had been stealing log poles from the defendant. State v. Nickerson, 126 M 157, 247 P 2d 188, 192, 193.

Subd. 4

Intent

Under this section, in order to convict one standing in loco parentis of assault upon a child, it is not necessary to prove either express or implied malice or permanent injury. It is up to the jury to determine from the facts and circumstances of each individual case whether the manner of punishment is reasonable and the degree moderate. State v. Straight, 136 M 255, 347 P 2d 482, 490.

CHAPTER 7—BIGAMY AND INCEST

94-702. (11026) Exceptions.

Voidness of Former Marriage

Under this section voidness of former marriage must have been declared by a court of competent jurisdiction; such a determination of voidness cannot be made under section 48-111 by the person involved to avoid being charged with bigamy under this section and section 94-701. State v. Crosby, — M —, 420 P 2d 431, 433.

94-705. (11029) Incest.

Amendment of Information

There was no substantial change in the charge where the court allowed the state to amend an information charging defendant with incest by changing "fornication" to "adultery." Whether the defendant was married and unmarried at the time is not a material ingredient of the offense. In either event the defendant is guilty, if the intercourse charged is proved. State v. Kuntz, 130 M 126, 295 P 2d 707, 710.

CHAPTER 8—BRIBERY AND CORRUPTION

94-804. (10856) Improper attempts to influence jurors, referees, etc.

Operation and Effect

Where the evidence discloses that the defendant conversed with a grand juror privately at the latter's home it cannot be construed to be in the regular course of proceedings and thus within the exception to this section. State v. Porter, 125 M 503, 242 P 2d 984, 990.

94-806. (10858) Embracery.

Operation and Effect

After a person has been discharged as a grand juror, the crime of embracery could not be committed even though the defendant thought he was influencing a grand juror. State v. Porter, 125 M 503, 242 P 2d 984, 987.

CHAPTER 9—BURGLARY AND HOUSEBREAKING—POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS

Section 94-901. Burglary defined.
94-904. Word "enter" defined.

94-901. (11346) Burglary defined. Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, motor vehicle and aircraft, vessel, or railroad car, with intent to commit grand or petit larceny or any felony, is guilty of burglary.

History: Ap. p. Sec. 58, p. 188, Bannack Stat.; re-en. Sec. 69, p. 281, Cod. Stat. 1871; re-en. Sec. 69, 4th Div. Rev. Stat. 1879; amd. Sec. 1, p. 50, L. 1885; re-en. Sec. 73, 4th Div. Comp. Stat. 1887; amd. Sec. 820, Pen. C. 1895; re-en. Sec. 8620, Rev. C. 1907; re-en. Sec. 11346, R. C. M. 1921; amd. Sec. 1, Ch. 126, L. 1949; amd. Sec. 1, Ch. 17, L. 1957. Cal. Pen. C. Sec. 459.

Amendments

The 1949 amendment inserted the word "automobile" and the word "or" before "railroad car."

The 1957 amendment substituted the words "motor vehicle and aircraft" for the word "automobile."

Effective Date

Section 2 of Ch. 17, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 18, 1957.

Aiding Another in Entry

To support a conviction of two persons for burglary, it is not essential that the entry shall be by both, but if one of them entered and was aided by the other in so doing both are guilty, since burglary may be committed by being present and aiding another in entering. State v. Harmon, 135 M 227, 340 P 2d 128.

Burglary Tools as Evidence

Burglary tools may be introduced and received into evidence only after proof is made connecting the tools with the accused or the crime and, where it does not appear from the evidence that the tools were ever in the possession or under the control of the defendant or that they were in any way connected with the alleged crime, their admission as evidence is error. State v. Filacchione, 136 M 238, 347 P 2d 1000.

Proof of Intent—Circumstantial Evidence

An express intention to commit a felony or larceny does not have to be proved, but it may be manifested by circumstances connected with perpetration of the offense without any positive testimony as to express intent. State v. Board, 135 M 139, 337 P 2d 924.

Truck

The legislature has made it clear that an automobile and truck are to be considered two distinct and separate vehicles for registration and tax purposes. It does not make sense to hold that the legislature intended, in making entry into an automobile burglary, to have intended the word "automobile" as a general term, and to include automobiles, trucks, busses and the like. Had the legislature intended to use a general term, it would have used the term "motor vehicle." Certainly no interpretation should be given any word which would make an act a crime unless it is clear that the legislature intended that interpretation should be given such word. State v. Duran, 127 M 233, 259 P 2d 1051, 1052. (See, however, the dissenting opinion, 127 M 233, 259 P 2d 1051, 1054.)

References

Cited in State v. Allison, 122 M 120, 199 P 2d 279, 299; State v. Fitzpatrick, 125 M 448, 239 P 2d 529.

94-902. (11347) Degrees of burglary.

Failure to Prove Time Crime Was Committed

Where the information alleges nighttime or first degree burglary it is essential that the state prove the crime occurred during the nighttime as provided in section 94-905. When the evidence is that the crime took place sometime between 3:15 a.m. and 8:00 a.m. and that on the particular day the sun rose at 5:56 a.m. a conviction of nighttime burglary cannot stand. State v. Fitzpatrick, 125 M 448, 239 P 2d 529, distinguished in 135 M 139, 144, 337 P 2d 924, 927.

94-903. (11348) Penalty.

References

Cited in State ex rel. Nelson v. Ellsworth, 141 M 78, 375 P 2d 316, 318; Petition of McGrath, 143 M 397, 390 P 2d 452.

94-904. (11349) Word "enter" defined. The word "enter," as used in this chapter, includes the entrance of the offender into such house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, automobile, vessel, or railroad car, or the insertion therein of any part of his body, or of any instrument or weapon held in his hand, or used or intended to be used, to threaten or intimidate the inmates, or to detach or remove the property.

History: En. Sec. 823, Pen. C. 1895; re-en. Sec. 8623, Rev. C. 1907; re-en. Sec. 11349, R. C. M. 1921; amd. Sec. 2, Ch. 126, L. 1949.

Amendment

The 1949 amendment inserted the words "store, mill, barn" and the word "automobile."

Repealing Clause

Section 3 of Ch. 126, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 126, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved March 1, 1949.

94-905. (11350) Nighttime defined.

Operation and Effect

When an information charges nighttime or first degree burglary, proof that the crime occurred in the period between sunset and sunrise is essential in order to convict the defendant. State v. Fitzpatrick, 125 M 448, 239 P 2d 529, distinguished in 135 M 139, 144, 337 P 2d 924, 927.

References

Cited in State v. Board, 135 M 139, 337 P 2d 924, 927; State v. Moran, 142 M 423, 384 P 2d 777.

94-909. (11354) Carrying deadly weapon with intent to assault, etc.

References

Cited or applied in State ex rel. Keast v. District Court, 136 M 367, 348 P 2d 135, 138.

CHAPTER 10—COMMON NUISANCES—MAINTENANCE IN CONNECTION WITH SELLING INTOXICATING LIQUORS—OPIUM—PROSTITUTION AND GAMBLING

Section 94-1002. Certain buildings declared nuisances.

94-1001. (11123) Definition of "person" and "building."

Operation and Effect

Actions for the prosecution of gambling laws may be prosecuted under either of these sections or under sections 94-2401 and 94-2404, or under each and all of such sections. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

Fact that county attorney proceeded under this law for abatement of gambling nuisance, rather than under sections 94-2401 and 94-2404 for criminal punishment, is not a matter of which the defendant can complain on appeal. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

94-1002. (11124) Certain buildings declared nuisances. Every building or place or tract of land under one ownership used for the purpose of lewdness, assignation, or prostitution, and every building or place or tract of land under one ownership wherein or upon which acts of lewdness, assignation, or prostitution are held or occur, and any building, place or tract of land under one ownership wherein or upon which gambling or those other illegal acts prohibited by chapter 24 and chapter 30, Title 94 Revised Codes of Montana, 1947, are carried on or occurs, contrary to any of the laws of the state of Montana, or wherein any wine rooms are conducted or maintained, contrary to the laws of the state of Montana, or wherein any opium or coca leaves, their salts, derivatives, and preparations thereof are sold or given away or used contrary to the laws of the state of Montana, is a nuisance which shall be enjoined, abated, and prevented as hereinafter provided, whether the same be a public or private nuisance.

History: En. Sec. 2, Ch. 95, L. 1917; amd. Sec. 1, Ch. 76, L. 1921; re-en. Sec. 11124, R. C. M. 1921; amd. Sec. 1, Ch. 268, L. 1959.

Amendment

The 1959 amendment inserted the words "or tract of land under one ownership" the first two times it appears and substituted the words "place or tract of land under one ownership wherein or upon which gambling or those other illegal acts prohibited by chapter 24 and chapter 30, Title 94 Revised Codes of Montana, 1947, are" for the words "wherein gambling is."

Repealing Clause

Section 2 of Ch. 268, Laws 1959 re-

pealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 268, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 16, 1959.

Cross-Reference

See note to sec. 94-1004. State ex rel. Olsen v. 30 Club, 124 M 91, 219 P 2d 307; State ex rel. Bergland v. Bradley, 124 M 434, 225 P 2d 1024.

Illegal Use of Premises by Vendee

Where vendee-madam sought to void mortgage given vendor-madam on property used exclusively for prostitution, on the grounds that vendor-madam knew the property was to be used in violation of the laws and public policy of Montana, bare knowledge of the illegal purpose was not sufficient to void the contract in the absence of more active participation on the part of the seller. Carroll v. Beardon, 142 M 40, 381 P 2d 295.

Permanent Injunction during Hearing

A permanent injunction against the use of defendant's premises as a house of prostitution and an order of abatement cannot be granted pursuant to this section while a motion to strike is pending and before issues have been finally joined. State ex rel. Harrison v. Baker, 135 M 180, 340 P 2d 142.

Punch Boards

Premises wherein punch boards are operated may be abated as a nuisance inasmuch as punch boards constitute a lottery and play at lottery is gambling. Sections 84-5701, 84-5702 (since repealed) and 94-2401 which assume to authorize the use of punch boards as trade stimulators violate § 2, Art. XIX of the Montana Constitution, which prohibits the legislature from authorizing lotteries, and therefore are invalid and do not prevent the abatement of the premises as a nuisance. State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140.

94-1003. (11125) County attorney to abate nuisance, etc.

Procedural Rules Applicable

A suit under the provisions of this section is a civil suit, and is governed by the same rules applicable in other injunction suits where no other statutory direction is given as to the manner in which the court shall proceed. State ex rel. Harrison v. Baker, 135 M 180, 340 P 2d 142.

References

Cited or applied in Chovanak v. Matthews, 120 M 520, 188 P 2d 582, 584; State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140.

94-1004. (11126) Verification of complaint—temporary injunction.

Law Applicable

The procedure for the abatement of a nuisance per se provided by the statute is that set forth by this law and the general procedure for the issuance of an injunction in ordinary civil cases has no application. State ex rel. Bergland v. Bradley, 124 M 434, 225 P 2d 1024.

Order Quashing Injunction Appealable

Where temporary injunction enjoining defendant from conducting the business constituting a nuisance as described in the complaint was quashed same day of issuance and an order issued enjoining defendant from operating "any of the games of chance described in the complaint contrary to the laws of the State of Montana," such order was appealable. State ex rel. Olsen v. 30 Club, 124 M 91, 219 P 2d 307, 309.

Quashing Injunction Prior to Hearing

Where complaint and affidavits showed prima facie that premises constituted a nuisance per se, it was error to quash the temporary injunction issued thereunder when defendant filed affidavit under provisions of section 93-4211, but injunction should have remained in effect until a hearing was had. State ex rel. Olsen v. 30 Club, 124 M 91, 219 P 2d 307, 309.

Verified Complaint

A complaint filed by a person other than the county attorney, if verified on information and belief pursuant to section 93-3702, is sufficient for the issuance of a temporary injunction. State ex rel. Bergland v. Bradley, 124 M 434, 225 P 2d 1024.

94-1007. (11129) Order of abatement—sale of fixtures, etc.

References

Cited or applied in State ex rel. Harrison v. Baker, 135 M 180, 340 P 2d 142, 145.

94-1009. (11131) Owner may give bond—terms of bond, etc.

Operation and Effect

This section did not give authority to court to order the return of the property to the owners where sheriff in executing judgment made return of no gambling equipment found notwithstanding that defendants had stipulated that gambling equipment was in their possession. State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1033.

References

Cited or applied in State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140, 142.

CHAPTER 11—CRIMINAL CONSPIRACY AND ILLEGAL PRACTICES IN RESTRAINT OF TRADE—TRUSTS—DISCRIMINATIONS—POOLING GRAIN WAREHOUSES—DESTROYING FOOD

Section 94-1104. Unlawful trusts and monopolies—penalty.

94-1101. (10898) Criminal conspiracy defined and punishment fixed.

Liability of Coconspirator

A coconspirator may be found guilty of a crime committed by his fellow conspirator whether the fellow conspirator is alive or dead, competent or incompetent, at the time of his trial. State v. Alton, 139 M 479, 365 P 2d 527, 535.

References

Cited or applied in State v. Simon, 126 M 218, 247 P 2d 481, 485.

Collateral References

Bill of particulars to one accused of conspiracy to overthrow government. 5 ALR 2d 496.

94-1104. (10901) **Unlawful trusts and monopolies — penalty.** Every person, corporation, stock company, or association of persons in this state, who, directly or indirectly, combine or form what is known as a trust, or make any contract with any person or persons, corporation, or stock companies, foreign or domestic, through their stockholders, directors, officers, or in any manner whatever, for the purpose of fixing the price or regulating the production of any article of commerce—the phrase "articles of commerce," as herein employed, shall and does include not only those articles which are generally, popularly, and legally known as articles of commerce, but also gas, water, water power, electric light, and electric power, for whatever purpose used or employed—or of the product of the soil for consumption by the people, or to create or carry out any restriction in trade, to limit productions, or increase or reduce the price of merchandise or commodities, or to prevent competition in merchandise or commodities, or to fix a standard or figure whereby the price of any article of merchandise, commerce, or product, intended for sale, use, or consumption, will be in any way controlled, or to agree, directly or indirectly, to add to a bid for any contract an amount, fixed by percentage or otherwise, for the purpose of making a refund or sharing costs of bidding with any other bidder, or to return a part of any amount added to a bid by collusive agreement among bidders to any person, association, organization or corporation, or to create a monopoly in the manufacture, sale, or transportation of any such article, or to enter into an obligation by which they shall bind others or themselves not to manufacture, sell, or transport any such articles below a common standard or figure, or by which they agree to keep such article or transportation at a fixed or graduated figure, or by which they settle the price of such article, so as to preclude unrestricted competition, is punishable by imprisonment in the county jail for a period not less than twenty-four (24) hours or more

than one (1) year, or by fine not exceeding twenty-five thousand dollars ($25,000), or both.

History: En. Sec. 1, Ch. 97, L. 1909; re-en. Sec. 10901, R. C. M. 1921; amd. Sec. 1, Ch. 102, L. 1967.

Amendments

The 1967 amendment inserted "or to agree * * * organization or corporation" after "in any way controlled" and made minor changes in style.

Insurance Business

Since this section prohibits conspiracies in restraint of trade in the insurance business, federal district court, because of the provisions of the McCarran Act (15 U. S. C. § 1 et seq.), would have no jurisdiction of a suit for violation of the Sherman and Clayton Acts involving the business of insurance, unless the suit fell within an exception to the McCarran Act. Professional & Business Men's Life Ins. Co. v. Bankers Life Co., 163 F Supp 274, 280.

References

McNussen v. Graybeal, 146 M 173, 405 P 2d 447.

CHAPTER 12—CRUELTY TO ANIMALS

Section 94-1201. Overdriving animals.

94-1201. (11508) **Overdriving animals.** Every person who overdrives or overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or another, or deprives any animal of necessary food or drink, or shelter, in the case of household pets, or neglects or refuses to furnish it such food or drink, or shelter, in the case of household pets, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten or unjustifiably injured, maimed, mutilated or killed, or to be deprived of necessary food or drink, or shelter, in the case of household pets, or who willfully instigates or in any way engages in any act of cruelty to any animal, is guilty of a misdemeanor.

History: Ap. p. Sec. 144, p. 213, Bannack Stat.; re-en. Sec. 172, p. 309, Cod. Stat. 1871; re-en. Sec. 172, 4th Div. Rev. Stat. 1879; amd. Sec. 1, p. 2, L. 1881; re-en. Sec. 215, 4th Div. Comp. Stat. 1887; en. Sec. 1090, Pen. C. 1895; re-en. Sec. 8774, Rev. C. 1907; re-en. Sec. 11508, R. C. M. 1921; amd. Sec. 1, Ch. 131, L. 1965; Cal. Pen. C. Sec. 597.

Amendment

The 1965 amendment inserted "or shelter, in the case of household pets" following "food or drink" in three places.

CHAPTER 14—ELECTION FRAUDS AND OFFENSES—CORRUPT PRACTICES ACT

Section 94-1475. Political literature to contain name of officer of organization or person publishing and producing.
94-1476. Violation of preceding section a misdemeanor.

94-1454. (10800) **Political criminal libel.**

Compiler's Note

This section may be partially superseded by sec. 94-1475.

94-1475. Political literature to contain name of officer of organization or person publishing and producing. It shall be unlawful for any person to publish, print, mimeograph, type or otherwise produce any dodger, bill, handbill, pamphlet or other document which is designed to aid, injure or defeat any candidate or any political party or organization or measure before the people unless it is stated therein the name of the chairman or secretary, or the names of the other officers of the political or other organi-

zation publishing, printing, mimeographing, typing or otherwise producing such dodger, bill, handbill, pamphlet or other document or the name of some voter who is responsible therefor with his residence and street address, if any, together with the name of the publisher, printer or the producer thereof with his residence and street address, if any, or his place of business.

History: En. Sec. 1, Ch. 74, L. 1951.

Title of Act

An act making it unlawful for any person to publish, print, mimeograph, type or otherwise produce any dodger, bill, handbill, pamphlet or other document designed to aid, injure or defeat any candidate or any political party or organization or measure before the people, unless it is stated therein the name of the chairman or secretary, or the names of the other officers of the political or other organization producing the same, or the name of some voter who is responsible therefor with his residence and street address, if any, together with the name of the publisher, printer or other producer thereof with his residence and street address, if any, or his place of business, and providing that violation thereof shall constitute a misdemeanor, and repealing all acts and parts of acts in conflict herewith.

94-1476. Violation of preceding section a misdemeanor. Any person who shall violate the provisions of this act shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 74, L. 1951.

Repealing Clause

Section 3 of Ch. 74, L. 1951 repealed all acts and parts of acts in conflict therewith.

Collateral References

Elections⇐309.
29 C.J.S. Elections § 334.

CHAPTER 15—EMBEZZLEMENT AND OTHER OFFENSES BY PUBLIC OFFICERS

94-1503. (11320) **"Public moneys" defined.**

Cross-References

Judgments, etc., how pleaded, sec. 94-6415.

CHAPTER 16—EXTORTION

94-1601. (11389) **Extortion defined.**

Cross-References

Extortion by telephone, sec. 94-35-221.5.

CHAPTER 18—FALSE PERSONATION AND CHEATS

Section 94-1805. Obtaining money, property or services by false pretenses.
94-1822. Inducing engagement as an advertising agency for sale of real property by misrepresentation of fact concerning services—penalty.
94-1823. Unlawful to obtain credit, goods, or service by false use of credit device.
94-1824. Unlawful to obtain communication service without intention to pay.
94-1825. Theft or unlawful retention of credit device.
94-1826. Unlawful possession of counterfeit or stolen credit device.
94-1827. Notice may be in person or in writing.
94-1828. Use of false device as evidence of knowledge of falsity.
94-1829. Credit device violation as misdemeanor or felony.
94-1830. Communications originating or terminating in state.
94-1831. Obtaining accommodations with intent to defraud.

94-1805. (11410) **Obtaining money, property or services by false pretenses.** Every person who knowingly and designedly, by false or fraudu-

lent representation or pretenses, defrauds any other person of money or property, including evidence of indebtedness, or who knowingly and designedly obtains the service of another by false or fraudulent representation or pretenses, or who causes or procures others to report falsely of his wealth or mercantile character, and by thus imposing upon any person obtains credit, and thereby fraudulently receives services or gets into possession of money or property, is punishable in the same manner and to the same extent as for larceny of the money or the value of the property or services so obtained.

History: En. Sec. 933, Pen. C. 1895; re-en. Sec. 8683, Rev. C. 1907; amd. Sec. 1, Ch. 60, L. 1921; re-en. Sec. 11410, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1959. Cal. Pen. C. Sec. 532.

Amendment

The 1959 amendment inserted the words "or who knowingly and designedly obtains the service of another by false or fraudulent representation or pretenses"; inserted the words "receives services or" and substituted the words "the value of the property or services" for the word "property."

Application

A defendant charged under section 94-1806 with obtaining property by means of a confidence game cannot be convicted on evidence which shows that the defendant obtained such property "by false or fraudulent representation or pretenses" under this section because such crimes are separate and distinct offenses. State v. Allen, 128 M 306, 275 P 2d 200, 201. (Dissenting opinions, 128 M 306, 275 P 2d 200, 205, 206.)

Evidence of an Offense Not Charged in the Information

When a county officer is charged with collecting illegal fees, by presenting a claim under the name of another to the county for work which was within his duties as county surveyor it was prejudicial error for the court to admit evidence of another claim submitted by the county surveyor to the county which offense was not charged in the information (Justices Bottomly and Angstman dissenting). State v. Hale, 126 M 326, 249 P 2d 495, 496.

Information

Where a statute uses general or generic words in defining the offense the information or indictment bottomed upon that statute must specify the particular facts which constitute the offense. State v. Hale, 129 M 449, 291 P 2d 229, 232, distinguished in 135 M 449, 453, 340 P 2d 157, 160, overruled on another point, 142 M 459, 462, 384 P 2d 749. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

An information may be drawn consistent with this section which is not vulnerable to the objection that it is bad for duplicity for charging an offense under section 94-3908 (presenting fraudulent claim to a county). State v. Hale, 129 M 449, 291 P 2d 229, 234, overruled on another point, 142 M 459, 462, 384 P 2d 749. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

Information which avers only that the defendant made a "false" or "fraudulent" representation is not sufficient. It must expressly allege the facts which made the stated pretense false. State v. Hale, 129 M 449, 291 P 2d 229, 231, overruled on another point, 142 M 459, 462, 384 P 2d 749. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

To characterize a representation as "false" or "fraudulent" does not suffice to state the offense. The particulars in which the representations relied upon are false must appear from facts directly and positively set out. State v. Hale, 129 M 449, 291 P 2d 229, 232, overruled on another point, 142 M 459, 462, 384 P 2d 749. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

Operation and Effect

When a county officer is charged with collecting illegal fees by presenting a claim under the name of another to the county for work which was within his duties as county surveyor, the public policy of this state under section 94-5516 is that, as a matter of defense, the county officer is entitled to offer evidence of his good faith or honest mistake and the value received by the county. State v. Hale, 126 M 326, 249 P 2d 495, 496.

References

Cited or applied in State v. Keller, 126 M 142, 246 P 2d 817, 821.

Collateral References

Obtaining payment by debtor on valid indebtedness by false representation as criminal false pretenses. 20 ALR 2d 1266.

False representations as to income, profits, or productivity of property as fraud. 27 ALR 2d 14.

94-1806. (11411) Confidence games.

Application

Where evidence disclosed that all the defendant did, to induce the complaining witness to give him the ring, was, after she had broached the subject of oil wells, to say, in effect that he had an oil well in Louisiana from which he received $800 a month income, and that he would cut her in for $200 of that income. The jury could assume such statements were false, since, according to the complaining witness, neither the first $200 due July 15th, nor any other was ever paid to her. Defendant should have been prosecuted under section 94-1805 "obtaining money or property by false pretenses," not under this section "confidence games." State v. Allen, 128 M 306, 275 P 2d 200, 205. (Dissenting opinions, 128 M 306, 275 P 2d 200, 205, 206.)

Confidence or Bunco Game

It is a crime to obtain or attempt to obtain money by the use of a confidence game. State v. Hale, 134 M 131, 328 P 2d 930, 934.

Construction of Statute

The element of confidence must be present in order to maintain an action under this section. State v. Hale, 134 M 131, 328 P 2d 930, 934.

The confidence games described in this section are those whereby an elaborate scheme is developed to play upon the credulity or sympathy or some other trait of the victim. State v. Hale, 134 M 131, 328 P 2d 930, 934.

Operation and Effect

A defendant charged under this section with obtaining property by means of a confidence or bunco game cannot be convicted on evidence which shows that defendant obtained such property "by false or fraudulent representation or pretenses" under section 94-1805, because such crimes are separate and distinct offenses. State v. Allen, 128 M 306, 275 P 2d 200, 201. (Dissenting opinions, 128 M 306, 275 P 2d 200, 205, 206.)

Separate and Distinct Crime

This statute covers a separate and distinct crime from that covered by section 94-2406. State v. Hale, 134 M 131, 328 P 2d 930, 934.

94-1822. Inducing engagement as an advertising agency for sale of real property by misrepresentation of fact concerning services—penalty.

Any person engaged or purporting to be engaged as an advertising agency for real property who accepts or solicits money or other considerations for himself or for any other person, in connection with the execution by an owner of real property of any contract whereby such owner authorizes such person to serve as an advertising agency for the sale of such property, and who for the purpose of inducing the owner of such property to enter into such a contract makes or procures the making of any oral or written representation of fact with respect to the nature or extent of the services to be rendered for or on behalf of such owner by any such person under such contract, with reasonable ground for belief that such representation is not true, or who refrains from disclosing to such owner, any matter of fact pertinent to the nature or extent of the services to be rendered for or on behalf of such owner by any such person under such contract is guilty of a felony and shall be imprisoned for not less than one (1) year nor more than five (5) years.

History: En. Sec. 1, Ch. 125, L. 1959.

Title of Act

An act declaring that the acceptance or solicitation of money or other considerations in connection with any contract for the advertising of real property by misrepresentation or by failing to disclose facts pertinent to such contract is a felony and prescribing a penalty; containing a repealing clause.

Repealing Clause

Section 2 of Ch. 125, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Cross-Reference

Real Estate License Act to be construed as supplemental to this section, sec. 66-1946.

94-1823. Unlawful to obtain credit, goods, or service by false use of credit device. It shall be unlawful for any person knowingly to obtain or attempt to obtain credit, or to purchase or attempt to purchase any goods, property or services, by the use of any false, fictitious, counterfeit or expired credit card, telephone number, credit number or other credit device, or by the use of any credit card, telephone number, credit number or other credit device of another without the authority of the person to whom such card, number or device was issued, or by the use of any credit card, telephone number, credit number or other credit device in any case where such card, number or device has been revoked and notice of revocation has been given to the person to whom issued.

History: En. Sec. 1, Ch. 185, L. 1965.

Title of Act

An act making it unlawful to obtain or attempt to obtain goods, property or services by false or fraudulent use of credit cards or other false or fraudulent means, and providing penalties therefor.

94-1824. Unlawful to obtain communication service without intention to pay. It shall be unlawful for any person to obtain or attempt to obtain, by the use of any fraudulent scheme, device [,] means or method, telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities with intent to avoid payment of charges therefor.

History: En. Sec. 2, Ch. 185, L. 1965.

94-1825. Theft or unlawful retention of credit device. It shall be unlawful for any person to steal, take or remove a credit card or credit device from the person or possession of the person to whom issued, or, to retain or secrete a credit card or credit device without the consent of the person to whom issued, with the intent of using, delivering, circulating or selling or causing said card or device to be used, delivered, circulated or sold without the consent of the person to whom issued.

History: En. Sec. 3, Ch. 185, L. 1965.

94-1826. Unlawful possession of counterfeit or stolen credit device. It shall be unlawful for any person to have in his possession or under his control or to receive from another person any forged, altered, counterfeited, fictitious or stolen credit card or credit device with the intent to use, deliver, circulate or sell the same, or to permit or cause to procure the same to be used, delivered, circulated or sold, knowing the same to be forged, altered, counterfeited, fictitious or stolen.

History: En. Sec. 4, Ch. 185, L. 1965.

94-1827. Notice may be in person or in writing. The word "notice" as used in section 1 [94-1823] of this act shall be construed to include either notice given in person or notice given in writing to the person to whom the number, card or device was issued.

History: En. Sec. 5, Ch. 185, L. 1965.

94-1828. Use of false device as evidence of knowledge of falsity. The presentation or use of a false, fictitious, counterfeit, expired, unauthorized or revoked credit card, telephone number, credit number or other credit

device for the purpose of obtaining credit or the privilege of making a deferred payment for the article or service purchased shall be evidence of knowledge that the said credit device is false, fictitious, counterfeit, expired, or its use is unauthorized or revoked.

History: En. Sec. 6, Ch. 185, L. 1965.

94-1829. Credit device violation as misdemeanor or felony. Any person who violates any provision of sections 1, 2, 3 or 4 [94-1823, 94-1824, 94-1825 or 94-1826] of this act shall be guilty of a misdemeanor, punishable as provided by law therefor; provided, however, that if the value of the goods or services obtained through a violation of the provisions of section 1 or 2 [94-1823 or 94-1824] of this act amounts to the sum of fifty dollars ($50) or more, or if the value of the goods or services obtained through a series of violations of section 1 or 2 [94-1823 or 94-1824] of this act committed within a period not exceeding six (6) months amounts in the aggregate to the sum of $50.00 or more, any such violation or violations shall constitute a felony and shall be punishable as provided by law therefor.

History: En. Sec. 7, Ch. 185, L. 1965.

94-1830. Communications originating or terminating in state. Sections 1 and 2 [94-1823 and 94-1824] of this act shall apply when the telephone or telegraph service or message, signal or other communications by telephone or telegraph or over telephone or telegraph facilities either originates or terminates, or both originates and terminates in this state.

History: En. Sec. 8, Ch. 185, L. 1965.

94-1831. Obtaining accommodations with intent to defraud. (1) Any person who, with intent to defraud, obtains food, lodging or other accommodations at any hotel, apartment house, inn, rooming or boarding house, tourists' campground, mobile home park, motel, hospital, restaurant or cafe, or who, after having obtained such food, lodging or other accommodations at any such place, surreptitiously removes his baggage and clothing from the place, without first paying or tendering payment for the food, lodging or other accommodations, is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment not exceeding three (3) months or by a fine not exceeding one hundred dollars ($100), or both.

(2) Proof of any of the following facts is prima facie evidence of the fraudulent intent referred to in subsection (1) of this act:

(a) Lodging, food or other accommodations were obtained by false pretense or by false or fictitious show or pretense of any baggage or other property.

(b) The person failed or refused to pay for the food, lodging or other accommodations upon demand.

(c) The person made, drew and gave in payment for the food, lodging or other accommodations any check or draft on which payment was refused.

(d) The person departed without paying or offering to pay for the food, lodging or other accommodations.

(e) The person surreptitiously removed or attempted to remove his baggage.

History: En. Sec. 1, Ch. 135, L. 1967.

Title of Act

An act making it unlawful for any person to obtain, with intent to defraud, food, lodging or other similar accommodations; enumerating circumstances which constitute prima facie evidence of intent to defraud; and repealing section 94-3550, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 135, Laws 1967 read "Section 94-3550, R. C. M. 1947, is repealed."

CHAPTER 20—FORGERY AND COUNTERFEITING

Section 94-2014. Production of false identification documents.

94-2001. (11355) Forgery of wills, conveyances, etc.

Cross-Reference

State tax stamps, counterfeiting, sec. 94-35-260.

Act Committed by Indian on Indian Reservation

State court was without jurisdiction to try an Indian for forgery of a check where the Indian attempted to cash the check on a store located within the boundaries of an Indian Reservation. The defendant is still a ward of the federal government and is still under the exclusive jurisdiction of the federal government for all acts and crimes defined and made punishable by the laws of Congress, when committed within the exterior boundaries of an Indian reservation. State ex rel. Bokas v. District Court, 128 M 37, 270 P 2d 396.

Essential Elements

The essential elements of forgery are a false making of an instrument in writing, a fraudulent intent, and a writing which, if genuine, apparently might be of legal efficacy or the foundation of legal liability. State v. Cooper, 146 M 336, 406 P 2d 691; State v. Phillips, — M —, 412 P 2d 205.

General Intent

The intent required under this section, as controlled by section 94-105, has to be a general intent only. State v. Cooper, 146 M 336, 406 P 2d 691.

Non-negotiable Instruments

The fact that a warrant is non-negotiable does not affect the question as to whether one who passes it when containing a known forged indorsement is guilty of forgery. State v. Phillips, 127 M 381, 264 P 2d 1009, 1011.

Passing of Auditor's Warrant

The statute when speaking of indorsements while not specifically mentioning auditors' warrants does cover "orders." The indorsement of an auditor's warrant amounts to the indorsement of an order within the meaning of the statute. State v. Phillips, 127 M 381, 264 P 2d 1009, 1011.

Substantial Evidence

Where it was shown at trial that defendant did not know checks paid to him for fixing car were forged, combined evidence was not substantial to overcome the presumption of innocence in proving that defendant had a fraudulent intent at the time he cashed the checks. State v. Phillips, — M —, 412 P 2d 205.

Testimony of Person Forging Indorsement as Corroboration

The testimony of the person who forged the indorsement on a warrant and who was not implicated in the matter of passing or uttering the instrument is corroborating evidence to the testimony of an accomplice of the defendant charged with uttering the forged instrument, since the person who forged the indorsement is not an accomplice to the defendant who uttered the instrument as the making of the instrument and the uttering of it are two separate crimes although they both constitute forgery. State v. Phillips, 127 M 381, 264 P 2d 1009, 1014. (See, however, the dissenting opinions in 127 M 381, 264 P 2d 1009, 1016, 1018.)

Unnecessary for Instrument to Create Civil Liability

It is not necessary that the forged instrument should create civil liability before it can be held to be forgery. State v. Phillips, 127 M 381, 264 P 2d 1009, 1011.

Uttering Forged Instrument

"Uttering" a forged instrument consists in offering to another the forged instrument with knowledge of the falsity of the writing and with intent to defraud. State v. Cooper, 146 M 336, 406 P 2d 691.

One possessed of fraudulent intent who either writes a forged instrument, or who knowingly utters a forged instrument, each act being separate and distinct from the other, or who commits both acts, is guilty of forgery. State v. Cooper, 146 M 336, 406 P 2d 691.

94-2004. (11358) Punishment of forgery.

References

Cited in State v. Brown, 136 M 382, 351 P 2d 219, 222; State v. Cooper, 146 M 336, 406 P 2d 691.

94-2006. (11360) Possessing or receiving forged or counterfeit bills, etc.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 406 (dissenting opinion).

94-2007. (11361) Making, passing or uttering fictitious bills, etc.

Jurisdiction of Offense

An enrolled member of an Indian tribe was subject to prosecution in state court for forgery where check was obtained from Indian agency office on reservation but was cashed in a town outside the boundaries of the reservation. Petition of Fox, 141 M 189, 376 P 2d 726, 727.

The crime of forgery is committed in the place where the false, forged or counterfeit check is passed as true and genuine and the origin of the check has no bearing upon the crime. Petition of Fox, 141 M 189, 376 P 2d 726.

Passing False Check

The crime of forgery encompasses the passing of a check as true and genuine when in fact it is false, forged or counterfeit. Petition of Fox, 141 M 189, 376 P 2d 726.

Questions for Jury

Where defendant was charged with the crime of uttering and delivering a fictitious check, the intent to defraud and defendant's knowledge of the fictitious character of the check were questions for the jury. State v. Johnston, 140 M 111, 367 P 2d 891, 893.

Restitution

It is no defense under this section that defendant has made restitution. State v. Johnston, 140 M 111, 367 P 2d 891, 893.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 406 (dissenting opinion); State v. Heiser, 146 M 413, 407 P 2d 370.

94-2008. (11362) Counterfeiting coin, bullion, etc.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 406 (dissenting opinion).

94-2010. (11364) Possessing or receiving counterfeit coin, bullion, etc.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 406 (dissenting opinion).

94-2012. (11366) Counterfeiting railroad tickets, etc.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 406 (dissenting opinion).

94-2014. Production of false identification documents. Any person who knowingly procures or assists in the production, procurement, or distribution of any document falsely designating the age or identity of any person shall be guilty of a misdemeanor.

History: En. Sec. 1, Ch. 169, L. 1967.

Title of Act

An act specifying a penalty if a person knowingly procures or assists in the production, procurement, or distribution of any document falsely designating the age or identity of any person.

CHAPTER 24—GAMBLING

Section 94-2429. Slot machines—possession unlawful.
94-2430. Slot machine defined.
94-2431. Person or persons defined.
94-2432. Penalty for possession or permitting use of slot machine.

94-2401. (11159) Gambling games prohibited—penalty, etc.

Compiler's Note

That part of this section which relates to slot machines is probably superseded by secs. 94-2429 to 94-2432.

Cross-Reference

See note to sec. 94-2403. State v. Israel, 124 M 152, 220 P 2d 1003, 1011.

Constitutionality

This act and sections 84-5701, 84-5702 (since repealed) authorizing and licensing so-called trade stimulators is void and invalid as violative of § 2, Art. XIX of the Montana Constitution, which prohibits the legislature from authorizing lotteries. State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140, 141, 142.

Construction of Amendment

The 1937 amendment to this section which added the licensing provisions did not affect section 94-2404. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 996.

Prosecution of Gambling Laws

Actions for violation of the gambling laws may be prosecuted under either this section and section 94-2404 or under section 94-1001 et seq., the abatement law, or under each and all of such sections. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

Religious, Fraternal and Charitable Organizations

Religious, fraternal and charitable organizations and private homes are by section 94-2403 exempt from the payment of license fees but are not exempt from the provisions of this act which existed prior to the 1937 amendment. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 996; State v. Israel, 124 M 152, 220 P 2d 1003, 1011.

Slot Machines

Slot machines are not included among the enumerated "hickey" games nor among the "trade stimulators" from which the ban was lifted by the 1937 amendment known as the "Hickey Law." State v. Israel, 124 M 152, 220 P 2d 1003, 1010; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

Information charging defendant with the operation of slot machines was not subject to demurrer as not charging an offense. State v. Israel, 124 M 152, 220 P 2d 1003, 1009.

This section, banning the possession of slot machines, has not been repealed by sections 84-3601 to 84-3610 (since repealed). State v. Engle, 124 M 175, 220 P 2d 1015, 1016; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

The ban against slot machines was not lifted by sections 84-5701 and 84-5702 (since repealed). State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

The operation of all slot machines is prohibited to all persons without exception. State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

References

Cited or applied in State v. Read, 124 M 184, 220 P 2d 1020; State v. Tursich, 127 M 504, 267 P 2d 641, 642; State v. Porter, 130 M 299, 300 P 2d 952.

Collateral References

Entrapment to commit offense with respect to gambling or lotteries. 31 ALR 2d 1212.

94-2403. Organizations excluded from act.

Construction

The words "this act" in this section mean the licensing provisions of section 94-2401 which were added by the 1937 Act but not the remainder of such section which was in existence prior to such 1937 amendment. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 996.

Slot Machines

There is nothing in this law that makes it lawful for any person or any religious, fraternal or charitable organization, or any private home to run, conduct or keep any slot machine within the state of Montana. State v. Israel, 124 M 152, 220 P 2d 1003, 1011.

94-2404. (11160) Possession of gambling implements prohibited.

Cross-Reference

See note to sec. 94-2401. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

Effect of Other Laws

This section was not affected by the 1937 amendment to section 94-2401. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 996; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

This section, banning the possession of slot machines, has not been repealed by sections 84-3601 to 84-3610 (since repealed). State v. Engle, 124 M 175, 220 P 2d 1015, 1016; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

References

Cited or applied in State v. Read, 124 M 184, 220 P 2d 1020.

94-2406. (11162) Brace and bunco games prohibited.

Confidence or Bunco Game

Any game which is by this statute outlawed, may be a confidence or bunco game, for the design and conduct of those who use it gives it its character under this statute. State v. Hale, 134 M 131, 328 P 2d 930, 936.

Gambling Devices

The games described in this section are purported gambling devices so contrived, although masked as legitimate operations, to bilk the victim of his wager by manipulation. These games do not depend upon the active or passive emotions of the victim. State v. Hale, 134 M 131, 328 P 2d 930, 934.

"Morocco"

Defendant who used and dealt with game of "Morocco," a confidence game and bunco game, to win money from his victim was properly convicted of the crime prohibited by this section. State v. Hale, 134 M 131, 328 P 2d 930, 934, 935.

Penalty

The penalty of violating this statute is imposed upon every person who uses or deals with any game commonly known as a confidence game or bunco, as well as one who wins. State v. Hale, 134 M 131, 328 P 2d 930, 933.

Purpose of Statute

This statute is aimed at person who uses or deals with a confidence game, or bunco game, and not so much against the inanimate paraphernalia so used. State v. Hale, 134 M 131, 328 P 2d 930, 936.

Separate and Distinct Crime

This statute covers a separate and distinct crime from that covered by section 94-1806. State v. Hale, 134 M 131, 328 P 2d 930, 934.

Use of Confidence Game

It is a crime to use or deal with a confidence game or bunco. State v. Hale, 134 M 131, 328 P 2d 930, 934.

94-2409. (11165) Maintaining gambling apparatus a nuisance.

Operation and Effect

Any article, machine or apparatus maintained or kept in violation of any of the provisions of sections 94-2401 or 94-2404 is a public nuisance. State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

Slot Machines

The using, operating, keeping, and maintaining for use, of slot machines constitutes a nuisance. State ex rel. Replogle y. Joyland Club, 124 M 122, 220 P 2d 988; State v. Israel, 124 M 152, 220 P 2d 1003, 1011; State ex rel. Brown v. Buffalo Rapids Club, 124 M 172, 220 P 2d 1014.

94-2410. (11166) Duty of public officer to seize gambling implements, etc.

Decree Requiring Sale Amended

Decree requiring sheriff to sell seized slot machines was amended on appeal to require the sheriff to destroy such machines. State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1001.

References

Cited or applied in State v. Israel, 124 M 152, 220 P 2d 1003, 1011.

Collateral References

Forfeiture of property used in connection with gaming before trial of individual offender. 3 ALR 2d 751.

94-2411. (11167) Duty of magistrate to retain gambling implement, etc.

Return of Machines Erroneous

It was error for district court to order slot machines and other gambling equipment returned to defendant on an ex parte proceeding before the disposition of the case and the order is void ab initio. State v. Israel, 124 M 152, 220 P 2d 1003, 1009.

References

Cited or applied in State v. Engle, 124 M 175, 220 P 2d 1015, 1017.

94-2412. (11167.1) **Disposal of moneys confiscated, etc.**

Cross-Reference

See note to sec. 94-2411. State v. Israel, 124 M 152, 220 P 2d 1003, 1009.

References

Cited or applied in State v. Engle, 124 M 175, 220 P 2d 1015, 1017.

94-2413. (11168) **Authority to break and enter buildings where games, etc.**

References

Cited or applied in State v. Israel, 124 M 152, 220 P 2d 1003, 1012.

94-2414. (11169) **Duty of public officer to make complaint.**

References

Cited in State v. Israel, 124 M 152, 220 P 2d 1003, 1012.

94-2416. (11171) **Officers neglecting duty subject to forfeiture of office.**

References

Cited in State v. Israel, 124 M 152, 220 P 2d 1003, 1012.

94-2417. (11172) **Receiving money to protect offenders prohibited.**

References

Cited in State v. Israel, 124 M 152, 220 P 2d 1003, 1012.

94-2418. (11173) **Losses at gambling may be recovered in civil action.**

Collateral References

Assignment of, or succession to, statutory right of action for recovery of money lost at gambling. 18 ALR 2d 999.

94-2419. (11174) **Action may be brought by any dependent person.**

References

Cited or applied in Miller v. Emerson, 120 M 380, 186 P 2d 220.

94-2423. (11178) **Immunity of witnesses.**

Privilege or Immunity Must Be Claimed

Even though it be assumed that the provisions of this section were broad enough to include testimony before a grand jury it would have no application where defendant failed to claim either privilege or immunity when called before the grand jury. State v. Saginaw, 124 M 225, 220 P 2d 1021, 1023, distinguished in 130 M 299, 301, 300 P 2d 952, 953.

Testimony before Grand Jury

The words "grand jury" should not be read into this section which gives immunity from prosecution to persons testifying before a "court or magistrate." State v. Saginaw, 124 M 225, 220 P 2d 1021, 1023.

Defendant cannot, because of testimony before grand jury, be immune from prosecution for offense charged in information filed by county attorney weeks before impanelment of a grand jury. State v. Saginaw, 124 M 225, 220 P 2d 1021, 1023; State v. McRae, 124 M 238, 220 P 2d 1025, 1027, distinguished in 130 M 299, 301, 300 P 2d 952, 953.

94-2425. (11180) **Repealed.**

Repeal

This section (Sec. 1, Ch. 20, L. 1909; Sec. 1, Ch. 92, L. 1909; Sec. 1, Ch. 55, L. 1915; Sec. 1, Ch. 103, L. 1929), relating to racing bets, was repealed by Sec. 15, Ch. 196, Laws 1965.

94-2429. Slot machines—possession unlawful. From and after the passage and approval of this act, it shall be a misdemeanor and punishable,

as hereinafter provided, for any person to use, possess, operate, keep or maintain for use or operation or otherwise, anywhere within the state of Montana, any slot machine of any sort or kind whatsoever.

History: En. Sec. 1, Ch. 197, L. 1949.

Title of Act

An act prohibiting the licensing, use, operation, keeping or maintenance of slot machines within the state of Montana; defining certain terms used in this act; providing penalties for the violation of this act and repealing all acts and parts of acts in conflict herewith; providing for a referendum on this act; and providing for local option elections in counties on the question of the licensing and operation of slot machines and specifying the procedure for holding said election.

Collateral References

Gaming⇐79(1).
38 C.J.S. Gaming § 99.

94-2430. Slot machine defined. A slot machine is hereby defined as a machine operated by inserting a coin, token, chip or trade check therein by the player and from the play of which he obtains, or may obtain, money, checks, chips or tokens redeemable in money. Merchandise vending machines where the element of chance does not enter into their operation are not within the provisions of this act.

History: En. Sec. 2, Ch. 197, L. 1949.

94-2431. Person or persons defined. In addition to their ordinary meaning, the word "person" or "persons," as used in this act, shall include both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders and societies, including religious, fraternal and charitable organizations.

History: En. Sec. 3, Ch. 197, L. 1949.

94-2432. Penalty for possession or permitting use of slot machine. Any person, partnership, club, society, fraternal order, corporation, co-operative association or any other person, individual or organization who violates any of the provisions of this act, or who permits the use of any slot machine, as herein defined, on any place or premises owned, occupied or controlled by him or it, shall be guilty of a misdemeanor and shall be punishable by a fine of not less than one hundred dollars ($100.00), nor more than five hundred dollars ($500.00), or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 197, L. 1949.

Repealing Clause—Effective Date

Section 5 of Ch. 197, L. 1949 read, "All acts and parts of acts in conflict herewith, particularly all laws of this state and all ordinances of cities and towns relating to the issuance of licenses for the operation of slot machines, are hereby repealed and this act shall take effect and be in force and effect on and after the 31st day of December, 1950, as to sections 1 to 6, inclusive, provided a majority of the votes cast on this issue are against the operation of slot machines, and if a majority of the votes so cast are for the operation of slot machines, the act shall be in effect on said date as to sections 8 to 15, inclusive." At the general election in November, 1950, the majority of votes was against the operation of slot machines. Sections 7 to 16 of Ch. 197, L. 1949 are therefore omitted.

Separability of Provisions

Section 6 of Ch. 197, L. 1949 read, "If any part of this act shall be declared by any court of competent jurisdiction to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act."

CHAPTER 25—HOMICIDE

94-2501. (10953) Murder defined.

Conspiracy

A coconspirator may be found guilty of a crime committed by his fellow conspirator whether the fellow conspirator is alive or dead, competent or incompetent, at the time of his trial. State v. Alton, 139 M 479, 365 P 2d 527, 535.

All participants in a conspiracy may be found guilty of any of the degrees of murder or one or more may be found guilty of each degree. State v. Alton, 139 M 479, 365 P 2d 527, 538.

References

Cited or applied in State v. London, 131 M 410, 310 P 2d 571.

Collateral References

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR 2d 210.

94-2502. (10954) Malice defined—express or implied.

Operation and Effect

It is not necessary to show pre-existing malice against the deceased and malice may be shown directly or may be inferred from a lack of provocation. State v. London, 131 M 410, 310 P 2d 571, 582.

Malice may be express or implied and on proof of homicide by the defendant, malice is presumed, but the presumption does not exist in the presence of evidence tending to show that the act amounts only to manslaughter. State v. Rivers, 133 M 129, 320 P 2d 1004, 1006.

References

Cited or applied in State v. Dillon, 125 M 24, 230 P 2d 764, 767.

Collateral References

Inference of malice or intent to kill where killing is by blow without weapon. 22 ALR 2d 854.

94-2503. (10955) Degrees of murder.

Felony-murder Rule

Where the evidence disclosed that the defendant hired two men to set fire and burn his service station, and during the course of the arson the two men were burned and subsequently died, the defendant was guilty of first degree murder under the felony murder rule since any death directly attributable to a plot to commit arson makes all the conspirators in the arson plot equally guilty of first degree murder. State v. Morran, 131 M 17, 306 P 2d 679.

Guilty of Lesser Offense

Where defendant was charged with murder in the second degree it was permissible for the jury to find him guilty of involuntary manslaughter. State v. Allison, 122 M 120, 199 P 2d 279, 288.

References

Cited or applied in State v. Dillon, 125 M 24, 230 P 2d 764, 767; State v. London, 131 M 410, 310 P 2d 571.

Collateral References

Homicide: causing one, by threats or fright, to leap or fall to his death. 25 ALR 2d 1186.

94-2505. (10957) Punishment for murder.

Commutation of Sentence

Inmate of state prison, who along with his codefendant had been sentenced to life imprisonment on plea of guilty to first degree murder, was not entitled to release from custody because his codefendant had been released from prison after commutation of his sentence by the governor. Goff v. State, 139 M 641, 367 P 2d 557, 558.

Operation and Effect

Where there is evidence sustaining finding by trial court of murder in the first degree supreme court will not interfere with trial court's determination and the sentence of death. State v. Palen, 120 M 434, 186 P 2d 223, 224.

References

Andres v. United States, 333 U S 740, 92 L Ed 1055, 68 S Ct 880; Brown v. State, 202 F Supp 29, 30.

94-2507. (10959) Manslaughter—voluntary and involuntary.

Subd. 2

Acts of Omission

Omission to perform an act required by law can be the basis for manslaughter. Hence, where evidence disclosed that a child, 5 months old, died due to starvation, and that his weight at death was only 5 pounds 14 ounces which was but ten ounces

over his birth weight, and that the father and mother had the means with which to care for the child, the evidence would be sufficient to support the conviction of the parents for manslaughter. State v. Bischert, 131 M 152, 308 P 2d 969.

The failure to obtain medical aid for one who is owed a duty is a sufficient degree of negligence as to constitute involuntary manslaughter provided death results from the failure to act. State v. Mally, 139 M 599, 366 P 2d 868, 872.

Burden of Proof

The state in prosecuting for manslaughter because of the failure to provide medical aid is not required as an element of their proof to show the ability on behalf of the defendant to furnish such aid. If a defendant could not obtain aid either through normal procedure or the poor laws, this is a matter for his defense. State v. Mally, 139 M 599, 366 P 2d 868, 872.

Criminal Negligence

Insofar as the offense of involuntary manslaughter is concerned, the proof of culpability is supplied by evidence of criminal negligence. State v. Strobel, 130 M 442, 304 P 2d 606, 617, overruled on another point, 134 M 519, 525, 333 P 2d 1017, 1021.

It is wholly unnecessary in involuntary manslaughter cases to superimpose upon the requirement of the element of criminal negligence the further requirement that a determination must be made as to whether the act resulting in death might ordinarily be classified as malum in se or merely malum prohibitum, for, if the act is done in a manner which is criminally negligent, it thereby becomes malum in se and thereby includes the element of mens rea. State v. Strobel, 130 M 442, 304 P 2d 606, 617, overruled on another point, 134 M 519, 525, 333 P 2d 1017, 1021.

Wilful or evil intent is not an element of involuntary manslaughter. State v. Pankow, 134 M 519, 333 P 2d 1017, 1021.

Instructions

Where judge instructed the jury in the language of the statute thereby giving the jury the definitions of both voluntary and involuntary manslaughter, defendant could not complain on ground there was no evidence of voluntary manslaughter in the case where the jury found him guilty of involuntary manslaughter. State v. Allison, 122 M 120, 199 P 2d 279, 289.

Where defendant was charged with second degree murder but the court withdrew the murder charge from the jury and presented the question of the guilt or innocence of the defendant for the crime of manslaughter, an instruction charging the jury that the state must prove the "intent" alleged in the information could properly have been modified to apply to the crime of manslaughter, however, conviction will not be set aside where it appears that no prejudice resulted. State v. Allison, 122 M 120, 199 P 2d 279, 291.

Where evidence showed that defendant was drunk and that he drove his automobile at a high rate of speed into the rear of another automobile going the same direction, causing it to catch fire and killing the occupants, the contention of defendant that he could not remember the events which transpired at that time did not establish an accident and instruction on responsibility for deaths caused by accident was not necessary. State v. Souhrada, 122 M 377, 204 P 2d 792, 796.

In prosecution for involuntary manslaughter the issue is one of criminal negligence rather than intent and giving of instruction that "intent is not an element of involuntary manslaughter" was not erroneous. State v. Souhrada, 122 M 377, 204 P 2d 792, 797.

Since the word "feloniously" is not necessary in the information it was not necessary that the word "feloniously" be defined by the court's instructions and court's erroneous definition could not have been prejudicial particularly where other instructions clearly advised the jury of the elements of the crime. State v. Souhrada, 122 M 377, 204 P 2d 792, 797.

Where the court instructed the jury that in order to find the defendant guilty it must find that the defendant committed an unlawful act, not amounting to a felony, and that the unlawful act was the proximate cause of the injury and death; and then in a later instruction defined criminal negligence as such that amounts to a wanton, flagrant, or reckless disregard of consequences or wilful indifference of the safety or rights of others, the instructions taken as a whole are correct. For while the former may, standing alone, be inaccurate or even erroneous, yet as qualified and explained by other portions of the charge, in pari materia, it fully and fairly submits the case to the jury. State v. Bosch, 125 M 566, 242 P 2d 477, 480.

Intent

A wilful or evil intent is not a requirement of involuntary manslaughter. State v. Pankow, 134 M 519, 333 P 2d 1017, 1021.

Operation and Effect

This section is a recognition of the frailty of human nature, and has as its purpose to reduce a homicide committed under the circumstances therein contemplated to the grade of manslaughter. State v. Messerly, 126 M 62, 244 P 2d 1054, 1056.

Photographs in Evidence

In a prosecution of defendant for failure to provide food to an infant child which resulted in the child's death, it was error to admit into evidence photographs of the body of the child which showed ghastly and gruesome looking sores or scars alleged to have been caused by dermatitis. The charge was for failure to provide food and not for the failure to provide medical care and such photographs in no way went to the proof of starvation. Their purpose could only arouse the human feelings of the jury without aiding them in further understanding the crime charged. State v. Bischert, 131 M 152, 308 P 2d 969, 973.

Sufficiency of Evidence

Where defendant had invited another person to stay or "bunk" with him for the night, and thereafter, while in his tavern, shot through the screen and door of his bedroom striking such person who was on the other side of the door, jury was justified in returning a verdict of guilty of involuntary manslaughter. State v. Allison, 122 M 120, 199 P 2d 279, 289.

Defendant who deliberately drove his car around curve at a speed which he must have known was dangerous to human lives, those of himself and his passengers was properly convicted of involuntary manslaughter. State v. Pankow, 134 M 519, 333 P 2d 1017, 1019.

In order to convict a person for manslaughter because of failure to provide medical aid it must appear from the evidence that the defendant's failure to obtain medical aid was the proximate cause of death. State v. Mally, 139 M 599, 366 P 2d 868, 872.

Sufficiency of Information

Information for manslaughter against driver of death car was sufficient where it was in the form prescribed by section 94-6404, complied with the requirements of sections 94-6403, 94-6405, and met the tests provided by section 94-6412. State v. Haley, 132 M 366, 318 P 2d 1084, 1085.

Verdict of Manslaughter on Charge of Murder

Where defendant was charged with murder in the second degree it was permissible for the jury to find him guilty of involuntary manslaughter. State v. Allison, 122 M 120, 199 P 2d 279, 288.

94-2510. (10962) Proof of corpus delicti.

References

Cited or applied in State v. Storm, 127 M 414, 265 P 2d 971, 974 (concurring opinion; State v. Campbell, 146 M 251, 405 P 2d 978.

94-2511. (10963) Excusable homicide.

Instructions

Refusal to give instruction under this section was not reversible error in view of other instructions given. State v. Allison, 122 M 120, 199 P 2d 279, 289.

Collateral References

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR 2d 210.

94-2512. (10964) Justifiable homicide by public officers.

Collateral References

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR 2d 210.

94-2513. (10965) Justifiable homicide by other persons.

Collateral References

Homicide in commission of felony where the killing was the act of one not a participant in the felony. 12 ALR 2d 210.

CHAPTER 26—KIDNAPING

Section 94-2604. Prisoner holding hostage.

94-2601. (10970.1) Kidnaping—penalty—place of trial.

Collateral References

Seizure or detention for purpose of committing rape, robbery, or similar offense as constituting separate crime of kidnaping. 17 ALR 2d 1003.

94-2602. (10970.2) **Kidnaping with intent to send person, etc.**

Question for Jury

Where defendant is charged with kidnaping with intent to secretly confine a prison guard it was a question for the jury whether defendant was acting under duress or coercion because of threats made to him by other convicts participating in riot. State v. Walker, 139 M 276, 362 P 2d 548, 550.

Sufficiency of Evidence

Defendant was guilty of confining prison guard secretly against his will where the evidence showed that defendant, an inmate of the state prison, walked behind prison guard with a knife, after another inmate had disarmed the guard, until the inmates had placed the guard in isolation. State v. Frodsham, 139 M 222, 362 P 2d 413, 419.

On the trial of defendant charged with kidnaping with intent to secretly confine a prison guard a showing of actual physical violence or threat of personal injury are not required to prove the force necessary to establish the crime. State v. Walker, 139 M 276, 362 P 2d 548, 550.

Sufficiency of Information

An information under this section is sufficient if it contains a statement of facts constituting the offense charged in ordinary and concise language so as to enable a person of common understanding to know what was intended. State v. Randall, 137 M 534, 353 P 2d 1054, 1056.

94-2604. Prisoner holding hostage. Every person committed to the Montana state prison, who, while at such state prison or while being conveyed to or from the Montana state prison, or while at a state prison farm or ranch, or while being conveyed to or from any such place, or while under the custody of prison officials, officers or employees, or while escaping or attempting to escape therefrom, holds as hostage any person within the state prison or who, unlawfully, by force or threat of force holds any person or persons against their will shall be guilty of a felony and shall be imprisoned in the state prison for a term not less than ten (10) years, such term of imprisonment to commence from the time he would have otherwise been released from said prison.

History: En. Sec. 1, Ch. 128, L. 1961.

Title of Act

An act prohibiting persons committed to the state prison from holding hostages or from unlawfully holding persons against their will and fixing the penalty therefor; and providing for an effective date.

Effective Date

Section 2 of Ch. 128, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 2, 1961.

CHAPTER 27—LARCENY AND FALSIFICATION OF PUBLIC RECORDS AND JURY LISTS

Section 94-2702. Uttering fraudulent checks or drafts—evidence.
94-2704.1. Possession of stolen livestock as evidence of larceny.

94-2701. (11368) **Larceny defined.**

Agency

Where defendant was sole owner of corporate collection agency which contracted with other corporations to collect debts owed to them, defendant was an agent of the other corporations and was properly charged under that portion of this section covering embezzlement when he did not pay over agreed portions of debts which he collected on behalf of other corporation. State v. Holdren, 143 M 103, 387 P 2d 446.

Civil Liability

In action based upon indemnity bond issued by defendant to indemnify plaintiff against loss from fraud or dishonesty of its station agent, allegation in complaint that the agent while in possession of money and property belonging to plaintiff, had wrongfully and dishonestly appropriated plaintiff's products and cash money, sufficiently stated a cause of action on which to predicate civil liability. Waite v. Standard Accident Ins. Co., 132 M 220, 315 P 2d 989, 992.

Harmless Error

On the trial of defendant charged with committing larceny under this section by "taking" property, introduction of evidence by the state to prove that defendant committed larceny by "secreting" property, also provided for in the same section, was not prejudicial error where conviction was on a charge made with evidence which would also support conviction on a charge not made. State v. Rindal, 146 M 64, 404 P 2d 327.

Instructions

Conviction under this section requires proof of specific intent and an instruction that "when an unlawful act is shown to have been deliberately committed for the purpose of injuring another, it is presumed to have been committed with a malicious and guilty intent. The law also presumes that a person intends the ordinary consequences of any voluntary act committed by him" was erroneous. State v. Garney, 122 M 491, 207 P 2d 506, distinguished in 135 M 139, 147, 337 P 2d 924, 929.

Larceny by Indians on Indian Territory

A state district court was without jurisdiction to convict an Indian of larceny which occurred on Indian territory since under Acts of Congress (U. S. C. Tit. 18, §§ 1153, 3242) such an offense is within the exclusive jurisdiction of the United States. State v. Pepion, 125 M 13, 230 P 2d 961.

Proof of Intent

The intent required may be found from the facts and circumstances surrounding the transaction, but the mere existence of an unpaid debt does not demonstrate any intent fraudulently to appropriate the property. State v. Smith, 135 M 18, 334 P 2d 1099, 1102.

Sufficiency of Information

An information charging grand larceny by defendant, laid in the terms of this section is sufficient without particularity, so long as it enables the defendant to prepare a defense. State v. Fairburn, 135 M 449, 340 P 2d 157.

An information which charges the offense of larceny by a selling agent in the language of this section is sufficient and not vulnerable to a general demurrer; there is no requirement that the agency be detailed, and, as between owners, the amount of money stolen from each need not be particularized. State v. Fairburn, 135 M 449, 340 P 2d 157.

94-2702. (11369) **Uttering fraudulent checks or drafts—evidence.** Any person who for himself or as the agent or representative of another or as an officer of a corporation, wilfully, with intent to defraud shall make or draw or utter or deliver, or cause to be made, drawn, uttered or delivered, any check, draft or order for the payment of money upon any bank or depositary, or person, or firm, or corporation, knowing at the time of such making, drawing, uttering or delivery that the maker or drawer has no funds or insufficient funds in or credit with such bank or depositary, or person, or firm, or corporation, for the payment of such check, draft, or order in full upon its presentation, although no express representation is made with the reference thereto, shall upon conviction be punished as follows: If there are no funds in or credit with such bank or depositary, or person, or firm, or corporation, for the payment of any part of such check, draft or order, upon presentation, then in that case the person convicted shall be punished by imprisonment in the state prison not exceeding five (5) years, or by a fine not exceeding five thousand dollars ($5,000.00) or by both such fine and imprisonment; if such check, draft or order be for a sum of twenty-five dollars ($25.00) or less, and there are some but not sufficient funds in or credit with such bank, or depositary, or person, or firm, or corporation, for the payment of such check, draft or order in full, then in that case the person so convicted shall be punished by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding three hundred dollars ($300.00) or by both such fine and imprisonment; if such check, draft or order be for a sum greater than twenty-five dollars ($25.00) and there are some but not sufficient funds in or credit with such bank, or depositary, or person, or firm, or corpora-

tion, for the payment of such check, draft or order in full upon its presentation, then in that case the person so convicted shall be punished by imprisonment in the state prison not exceeding five (5) years, or by a fine not exceeding five thousand dollars ($5,000.00) or by both such fine and imprisonment. As against the maker or drawer thereof, the making, drawing, uttering or delivering of such check, draft or order as aforesaid shall be prima facie evidence of intent to defraud and of knowledge of no funds or insufficient funds, as the case may be, in or credit with such bank, or depositary, or person, or firm, or corporation, for the payment of such check, draft or order in full upon its presentation, provided such maker or drawer shall not have paid the drawee thereof the amount due thereon, within five (5) days after receiving notice that such check, draft, or order has not been paid by the drawee. The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank, depositary, person, firm or corporation, for the payment of such check, draft or order.

History: En. Sec. 881, Pen. C. 1895; re-en. Sec. 8643, Rev. C. 1907; amd. Sec. 1, Ch. 63, L. 1919; re-en. Sec. 11369, R. C. M. 1921; amd. Sec. 1, Ch. 135, L. 1957. Cal. Pen. C. Sec. 476a.

Amendment

The 1957 amendment made numerous changes in this section. For section prior to amendment see parent volume.

Repealing Clause

Section 2 of Ch. 135, Laws 1957, repealed all acts and parts of acts in conflict therewith.

Evidence of Intent

In prosecution for uttering and delivering a fraudulent check evidence was properly received as to other checks drawn on prior occasions on banks in which defendant had no account as such testimony tended to show defendant's intent to defraud. State v. Tully, — M —, 418 P 2d 549, 550.

Operation and Effect

Held, that where a person was convicted under this section, the proper procedure for review of errors was by appeal under the statutes and not by seeking at a later date the common-law writ of coram nobis. Were it shown that the defendant's case was exigent, as for example, that although innocent of any crime he was nevertheless arbitrarily sentenced and wrongfully imprisoned under that sentence, and if then the existing remedies by appeal as prescribed by our statutes and as well the usual writs to which this court customarily turns to prevent an injustice were found in truth inadequate, the court would not hesitate to design a further remedial writ so that the court could meet the emergency and attain the ends of justice, otherwise denied. State v. Zumwalt, 129 M 529, 291 P 2d 257, 260. (Dissenting opinion, 129 M 529, 291 P 2d 257, 262 based on the opinion that the defendant was innocent of the crime charged and arbitrarily sentenced.)

References

Petition of Spangler, 146 M 344, 406 P 2d 686.

94-2704. (11371) Grand larceny defined.

Aiding and Abetting

While the statute defines larceny as the taking of property from the person of another yet it is sufficient to show defendant's guilt that he aided or abetted in the commission of the crime under section 94-6423 because all persons concerned in the commission of a crime are principals under section 94-204. State v. Maciel, 130 M 569, 305 P 2d 335, 336.

Disposal of Stolen Property

If the crime of larceny has been completed, i. e., the taking and carrying away of the property has come to an end, then anyone subsequently assisting the thieves in the disposal of the stolen property would not be guilty of larceny. State v. Guay, 138 M 362, 357 P 2d 19, 22.

Effect of Ownership Not Proven as Alleged

Where the information alleges the ownership of the property, such allegation must be proven; proof of a brand only is not sufficient proof of the ownership of an animal bearing such brand. State v. Elmore, 126 M 232, 247 P 2d 488, 492.

Larceny by Bailee

Where defendant charged with grand larceny by bailee did not deny that he received a check from the complaining witness, but his defense was that it was a loan instead of a payment for an automobile, evidence as to whether the check was a loan or payment for the automobile was admissible over objection that it permitted a witness to vary a written instrument by parol testimony. State v. Ahl, 140 M 305, 371 P 2d 7, 9.

Defendant, who admitted title to automobile in the complaining witness and that he accepted and took custody of a check, and agreed that the money was to pay for the automobile, but failed to deliver the automobile, requiring the complaining witness to again pay for it, violated his trust as bailee by appropriating the money to his own use and was guilty of grand larceny by bailee. State v. Ahl, 140 M 305, 371 P 2d 7, 10.

Operation and Effect

Conviction for larceny cannot be sustained where the evidence connecting the defendant with the hide and asportation of a live steer amounts to no more than suspicion and conjecture. State v. Elmore, 126 M 232, 247 P 2d 488, 492.

It is grand larceny to take money from the person of another with a felonious intent no matter what the amount is that is taken. State v. Peschon, 131 M 330, 310 P 2d 591, 595.

Conviction of defendant of grand larceny of an automobile was reversed where the actual taking and asportation of the car in question was not proven. State v. Fairbanks, 140 M 243, 370 P 2d 497, 499. (Dissenting opinions, 140 M 243, 370 P 2d 497, 500.

Transporting of Stolen Property

Where one joins with a person, or persons in committing the crime of larceny and assists in the transporting and disposition of property which he knows to be stolen, he may be convicted of larceny. This is true even though the one assisting in the transporting and disposing of the stolen property was not in any manner connected with the initial taking of the property. State v. Guay, 138 M 362, 357 P 2d 19, 22.

94-2704.1. Possession of stolen livestock as evidence of larceny. The possession, claim of ownership or control over recently stolen livestock shall be deemed prima facie evidence of guilt of larceny of that livestock unless this presumption is rebutted or contradicted by other credible evidence.

History: En. Sec. 1, Ch. 202, L. 1965.

Title of Act

An act to provide a reputable [sic] presumption that possession of recently stolen livestock shall be deemed prima facie evidence of guilt of larceny.

Repealing Clause

Section 2 of Ch. 202, Laws 1965 repealed all acts and parts of act in conflict therewith.

94-2706. (11373) **Punishment of grand larceny.**

Plea of Guilty

Defendant's plea of "guilty" to information charging him with grand larceny rendered him subject to a sentence of "not less than one nor more than fourteen years" imprisonment, depending upon the view taken by the trial judge of the evidence to be presented to him, in open court, showing circumstances either in aggravation or mitigation of punishment. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 351.

The extent of defendant's punishment on plea of guilty to grand larceny should have been determined by the exercise of a sound discretion on the part of the trial judge after the circumstances had been "presented by the testimony of witnesses examined in open court" specifically provided for in sections 94-7813 and 94-7814 subject to the provisions of section 94-7831. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 351.

Reduction of Sentence

The sentence of a defendant, who pleaded guilty to grand larceny, to four years in the state prison was reduced to one year by the supreme court where trial court passed sentence upon receipt of private reports without allowing defendant or his counsel to learn of the representations in the reports and a hearing to present evidence to refute such representations as provided in sections 94-7813 and 94-7814. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 365.

References

In re Williams' Petition, 145 M 45, 399 P 2d 732.

94-2717. (11384) Claim of title, ground of defense.

Evidence of Intent

Where a selling agent is charged with larceny and sets up the defense of appropriating a customer's check under claim of right as a commission, testimony of clergyman concerning conversation had between himself and accused as to prior statements made by owner to agent, is inadmissible as hearsay since it is a self-serving declaration. State v. Fairburn, 135 M 449, 340 P 2d 157.

94-2721. (11388) Receiver of stolen property.

Essential Elements of Crime

Proof that the defendant knew the property was stolen is an essential element of the crime. The evidence is not sufficient where the state relies on a bill of sale which describes "3 cow hides red no brand" and in fact the hides had brands and cattle was missing from the brand owners, while the defendant proves that when he received the hides they were bundled up and so stiffly frozen that they could not be examined to see if they had brands. State v. Gilbert, 126 M 171, 246 P 2d 814, 815.

Operation and Effect

Conviction for receiving stolen goods cannot be sustained where the information charged that the defendant received a deepfreeze knowing the same to have been stolen from the true owner, Missoula County, while the facts where that the defendant was the county surveyor and he ordered a deepfreeze from a company and charged it to the county. Since the acts of the surveyor were unlawful, the county never purchased the freezer and never had it in its possession and at no time had title to the deepfreeze; therefore, Missoula County was never the owner from whom it was stolen as charged in the information. State v. Bourdeau, 126 M 266, 246 P 2d 1037, 1038.

Sufficiency of Information

It is not necessary to allege ownership, or that ownership is unknown, where the information otherwise describes the stolen goods with sufficient accuracy to apprise the defendant to prepare his defense and to protect him from double jeopardy. State v. Peters, 146 M 188, 405 P 2d 642.

References

Kuhl v. District Court, 139 M 536, 366 P 2d 347, 348.

CHAPTER 28—LIBEL

Section 94-2807. Publishing a true report of public proceedings privileged.

94-2807. (10995) Publishing a true report of public proceedings privileged.

No reporter, editor, or proprietor of any newspaper, nor any owner, licensee, or operator of a visual or sound radio broadcasting station or network of stations, nor any agent or employee of any such owner, licensee, or operator, is liable to any prosecution for a fair and true report of any judicial, legislative, or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice in making such report, which is not implied from the mere fact of publication or broadcast.

History: En. Sec. 436, Pen. C. 1895; re-en. Sec. 8331, Rev. C. 1907; re-en. Sec. 10995, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1951. Cal. Pen. C. Sec. 254.

Amendment

The 1951 amendment inserted the words "nor any owner, licensee, or operator of a visual or sound radio broadcasting station or network of stations, not any agent or employee of any such owner, licensee, or operator," and "or broadcast."

Repealing Clause

Section 2 of Ch. 13, L. 1951 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 13, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 2, 1951.

CHAPTER 29—LEGISLATURE—OFFENSES AGAINST

94-2906. (10839) Receiving bribes by members of the legislative, etc.

References

Cited in United States v. Johnson, 215 F Supp 300, 306.

CHAPTER 30—LOTTERIES

94-3001. (11149) Lottery defined.

Amendment of Constitution

Proposed initiative measure No. 63, which would legalize lotteries and repeal sections 94-3001 to 94-3011, could not be considered as an amendment to the Montana constitution where it did not comply with sections 8 or 9, article XIX, which set forth the manner of constitutional amendment. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 764.

Initiative Measure Unconstitutional

Proposed initiative measure No. 63, which would legalize lotteries and repeal sections 94-3001 to 94-3011, is unconstitutional. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 763, 764.

Numbers Games

A numbers game, whether called Chinese lottery, "The Crown Game," "The Crown punchboard game" or any other game is a lottery. State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

Punch Boards

Punch boards constitute a lottery. State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140, 141.

In an action for violation of this section it was no defense that the defendant had offered to pay for the operation of such punch boards in accordance with Ch. 201, Laws 1951, which purports to license trade stimulators such as punch boards since it is not competent for the legislature to authorize lotteries in view of Const. Art. 19, sec. 2 and the case of State ex rel. Harrison v. Deniff. State v. Tursich, 127 M 504, 267 P 2d 641, 642.

Slot Machines

The operation of a slot machine is a lottery and banned by the criminal laws of this state. State v. Marck, 124 M 178, 220 P 2d 1017, 1019; State v. Read, 124 M 184, 220 P 2d 1020; State ex rel. Olsen v. Crown Cigar Store, 124 M 310, 220 P 2d 1029, 1032.

Valuable Consideration

Where one is required to make an outlay of money in order to participate in a scheme whereby an award is made by chance, the participant pays valuable consideration for the chance to participate, notwithstanding the fact he may also receive merchandise at the same time that the outlay is made. State v. Cox, 136 M 507, 349 P 2d 104. (State ex rel. Stafford v. Fox-Great Falls Theatre Corp., 114 M 52, 132 P 2d 689, distinguished.)

References

Cited in State ex rel. Replogle v. Joyland Club, 124 M 122, 220 P 2d 988, 1000.

94-3003. (11150) Punishment for drawing lottery.

Cross-Reference

See note to sec. 94-3001. State v. Marck, 124 M 178, 220 P 2d 1017, 1019.

Collateral References

Entrapment to commit offense with respect to gambling or lotteries. 31 ALR 2d 1212.

94-3011. (11158) Punishment.

Cross-Reference

See note to sec. 94-3001. State v. Marck, 124 M 178, 220 P 2d 1017, 1019.

CHAPTER 32—MALICIOUS INJURIES TO RAILROADS, HIGHWAYS AND OTHER PROPERTY

Section 94-3202. Injuries to milestones, guideposts, trees.
94-3203. Tampering with telegraph, telephone and electric systems—penalty.
94-3211. Removal, injury or destruction of telephone, telegraph and electric facilities—penalty.

94-3201. (11464) **Repealed.**

Repeal

This section (Sec. 1031, Pen. C. 1895), relating to injuries to highways and bridges, was repealed by Sec. 12-109, Ch 197, Laws 1965, effective December 31, 1966.

94-3202. (11465) **Injuries to milestones, guideposts, trees.** (1) Every person who maliciously removes or injures any mileboard, post, or stone, or guidepost or any inscription on such, erected on any highway, is guilty of a misdemeanor.

(2) Every person who maliciously injures or destroys any shade or ornamental tree on any highway is guilty of a misdemeanor.

History: En. Sec. 1032, Pen. C. 1895; re-en. Sec. 8737, Rev. C. 1907; re-en. Sec. 11465, R. C. M. 1921; amd. Sec. 12-107, Ch. 197, L. 1965. Cal. Pen. C. Sec. 590.

Amendment

The 1965 amendment designated the previous text as subsection (1); made a minor change therein; and added subsection (2).

94-3203. (11466) **Tampering with telegraph, telephone and electric systems—penalty.** Any person who maliciously and wilfully taps, or makes any connection with any telegraph or telephone line, wire, cable, or instrument, or electric power line, wire or cable belonging to another, or maliciously and wilfully reads, takes or copies any messages, communication or report intended for another passing over any such telegraph or telephone line, wire, or cable, in this state, or who wilfully and maliciously prevents, obstructs or delays by any means or contrivance whatsoever the sending, transmission, conveyance or delivery in this state of any message, communication or report by or through any telegraph or telephone line, wire or cable or who uses any apparatus to unlawfully do or cause to be done any of the acts hereinbefore mentioned, or who aids, agrees with, employs or conspires with any person or persons to unlawfully do, or permit or cause to be done, any of the acts hereinbefore mentioned, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three hundred dollars ($300.00) nor more than one thousand dollars ($1,000.00) or imprisonment in the county jail not exceeding one year, or both, in the discretion of the court. And it shall be unlawful for any person who, for nonpayment of dues, tolls, or other good and sufficient reasons, has been disconnected from service with any telephone, telegraph or electric light or power system in this state to connect or allow himself to be connected with any such company lines without direct and express permission from the official authorized to permit such reconnection. Any person or persons who shall violate or cause to be violated this provision shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00) or imprisonment in the county jail for ten days, or both, in the discretion of the court.

History: En. Sec. 1033, Pen. C. 1895; re-en. Sec. 8738, Rev. C. 1907; re-en. Sec. 11466, R. C. M. 1921; re-en. Sec. 1, Ch. 66, L. 1929; amd. Sec. 2, Ch. 174, L. 1963. Cal. Pen. C. Sec. 591.

Amendment

The 1963 amendment deleted the words "displaces, removes, injures, destroys or obstructs any telegraph, telephone or electric light line, wire, cable, pole or conduit belonging to another, or the material or property appurtenant thereto, or maliciously and wilfully cuts, breaks" which followed "wilfully and maliciously" in the first clause of the section; and inserted "or

electric power line, wire or cable" after "telephone line, wire, cable, or instrument" near the beginning of the section.

Repealing Clauses

Section 3 of Ch. 174, Laws 1963 read "Section 94-3209 of the Revised Codes of Montana, 1947, is hereby repealed."

Section 4 of Ch. 174, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 5 of Ch. 174, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

94-3209. (11473) Repealed.

Repeal

This section (Sec. 1, Ch. 71, L. 1903), relating to interference with electric lines or apparatus, was repealed by Sec. 3, Ch. 174, Laws 1963.

94-3211. Removal, injury or destruction of telephone, telegraph and electric facilities—penalty. Any person who wilfully and maliciously displaces, removes, injures or destroys any public telephone instrument or any part thereof or any equipment or facilities associated therewith, or who enters or breaks into any coin box associated therewith, or who wilfully and maliciously cuts, breaks, displaces, removes, injures or destroys any microwave facilities or any telegraph or telephone line, wire, cable, pole or conduit or an electric power line, cable, transformer, pole or conduit or facilities associated therewith belonging to another or the material or property appurtenant thereto is guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars ($1,000.00) or by imprisonment in the state prison for not more than five (5) years, or by both such fine and imprisonment.

History: En. 94-3211 by Sec. 1, Ch. 174, L. 1963.

Title of Act

An act to amend Chapter 32 of Title 94 of the Revised Codes of Montana, 1947, relating to crimes involving malicious injuries to railroads, highways and other property, by adding thereto a new section to be numbered 94-3211, making it a felony for any person to wilfully and maliciously displace, remove, injure or destroy any public telephone instrument or part thereof or equipment or facilities associated therewith, or to enter or break into any coin box associated therewith, or to wilfully and maliciously cut, break, displace, remove, injure or destroy any microwave facilities or any telegraph or telephone line, wire, cable, pole or conduit or electric power line, cable, pole, conduit or facilities associated therewith belonging to another or the material or property appurtenant thereto, and providing a penalty therefor, and by amending section 94-3203 of the Revised Codes of Montana, 1947, making it a misdemeanor to tamper with telegraph, telephone and electric systems, by deleting therefrom so much thereof as makes it a misdemeanor for any person to wilfully and maliciously displace, remove, injure, destroy or obstruct any telegraph, telephone or electric light line, wire, cable, pole or conduit belonging to another, or the material or property appurtenant thereto, and providing it shall be a misdemeanor to wilfully or maliciously tamper with electric power lines; repealing section 94-3209 of the Revised Codes of Montana, 1947; repealing all acts and parts of acts in conflict herewith; and providing an effective date.

CHAPTER 33—MALICIOUS MISCHIEF GENERALLY

Section 94-3334. Injury to trees on public lands.

94-3305. (11478) Use of automobiles without consent of owners, etc.

References

Cited or applied in the dissenting opinion in State v. Quinlan, 126 M 52, 244 P 2d 1058, 1061; United States v. Brickles, 177 F Supp 944, 947.

94-3334. (11507) **Injury to trees on public lands.** Every person who commits a trespass on or any injury to any state lands or the improvements thereon, or who, without the proper authority, cuts, fells, girdles, injures or destroys any trees or timber upon any of the school, university or other state lands, or removes or attempts to remove the same, or knowingly purchases or receives such trees or timber, or advises the removal thereof, is guilty of a misdemeanor, and is also liable to the state for three (3) times the value of said trees or timber, or lumber into which the same are converted.

All fines collected and all moneys recovered by virtue of this section must be paid into the trust fund if the lands involved are held in trust either through deed or grant or be paid to the funds of the state departments administrating such lands where lands not held in trust are involved.

History: Ap. p. Sec. 1, p. 256, L. 1891; en. Sec. 1076, Pen. C. 1895; re-en. Sec. 8773, Rev. C. 1907; re-en. Sec. 11507, R. C. M. 1921; amd. Sec. 1, Ch. 221, L. 1955.

Amendment

The 1955 amendment substituted that part of the second paragraph beginning with the words "trust fund * * *" for "school fund of the state."

CHAPTER 35—MISCELLANEOUS OFFENSES

Section 94-3527.1. Possession of weapon by prisoner.
94-3565. Ditch overflowing on highway.
94-3579. Firearms—use of by children under the age of fourteen years prohibited.
94-35-106. Intoxicating liquors—penalty for giving or selling to any person under the age of twenty-one years.
94-35-106.1. Jurisdiction of offenses.
94-35-106.2. Possession of beer or liquor by minor—misdemeanor.
94-35-123. Unlawful to dispense mescal button.
94-35-204. Stolen livestock—seizure and confiscating of vehicle used to transport.
94-35-221.1. Failure to relinquish party line or telephone for emergency call—penalty.
94-35-221.2. Lack of knowledge as defense—emergency as defense.
94-35-221.3. False pretext of emergency—penalty.
94-35-221.4. Printing of act in directories.
94-35-221.5. Abuse, harassment or extortion by telephone—evidence of intent—venue of offenses—penalty.
94-35-221.6. False statements to harass by telephone—venue of offenses.
94-35-258. Endurance races of horses prohibited.
94-35-259. Penalty for running endurance horse race.
94-35-260. State tax stamps—failure to affix or cancel—removal—penalty—counterfeiting tax stamp or insignia of Montana or other state—penalty.
94-35-261. Importing or selling farm machinery with altered, defaced or removed serial number.
94-35-262. Altering, defacing or removing serial number on farm machinery.
94-35-263. Penalty.
94-35-264. Furnishing certain articles to and receiving articles from prisoners in state prison—receiving such articles by prisoners—felony.
94-35-265. Abandoning or permitting abandoned icebox in dangerous condition—penalty.
94-35-269. Hunting in careless or reckless manner—failure to assist person injured or wounded—misdemeanor.
94-35-270. Delivery of grain containing toxic chemicals to public warehouses.
94-35-271. Penalty for violation.
94-35-271.1. Coloration of wheat, oats, rye or barley treated with injurious or toxic substances.

94-35-271.2. Sale or offering for sale product in violation of act prohibited.
94-35-271.3. Violation constitutes misdemeanor.
94-35-272. Unlawful operation, use, interference, or tampering of aircraft—penalty.
94-35-273. Switch blade knives—possession, selling, using, giving, or offering for sale—penalty—collectors.
94-35-274. Recording of conversation without knowledge of parties prohibited,
94-35-275. Public officials and public meetings exempt — warning of recording.

94-3506. (10921) **Arrests, seizure or levy upon property, etc.**

Collateral References

False imprisonment: liability of private citizen for false arrest by officer. 21 ALR 2d 643.

94-3509. (10940) **Attorneys forbidden to defend prosecutions, etc.**

Improper Representation

Where prisoner was represented in a second case by court-appointed counsel who had formerly prosecuted him while serving as county attorney in a case resulting in the prior conviction with which he was charged in the second case, the error, if any, should have been raised in the district court by a writ of error coram nobis and not by habeas corpus proceeding in the supreme court. Butler v. State, 139 M 437, 365 P 2d 822, 823.

94-3513. (11296) **Repealed.**

Repeal

This section (Sec. 752, Pen. C. 1895), relating to boxing and wrestling matches, was repealed by Sec. 4, Ch. 171, Laws 1953.

94-3525. (11302) **Carrying certain concealed weapons in cities, etc.**

Collateral References

Forfeiture of weapon unlawfully carried, before trial of individual offender. 3 ALR 2d 752.

94-3527. (11304) **Same—who excepted from act.**

References

Cited or applied in State v. Nickerson, 126 M 157, 247 P 2d 188, 192.

94-3527.1. Possession of weapon by prisoner. Every prisoner committed to the Montana state prison, who, while at such state prison, or while being conveyed to or from the Montana state prison, or while at a state prison farm or ranch, or while being conveyed to or from any such place, or while under the custody of prison officials, officers or employees, possesses or carries upon his person or has under his custody or control without lawful authority, a dirk, dagger, pistol, revolver, sling-shot, sword-cane, billy, knuckles made of any metal or hard substance, knife, razor, not including a safety razor, or other deadly weapon, is guilty of a felony and shall be punishable by imprisonment in the state prison for a term not less than five (5) years nor more than fifteen (15) years. Such term of imprisonment to commence from the time he would have otherwise been released from said prison.

History: En. Sec. 1, Ch. 131, L. 1961.

Title of Act

An act relating to deadly weapons; prohibiting the carrying or possession of deadly weapons by persons committed to the Montana state prison and fixing the penalty therefor; and providing for an effective date.

Effective Date

Section 2 of Ch. 131, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 2, 1961.

94-3540. (10944) Criminal contempt.

Collateral References

Contempt for disobedience of orders in criminal matters where beyond court's jurisdiction. 12 ALR 2d 1059.

Right of witness to refuse to answer, on the ground of self-incrimination, as to membership in or connection with party, society, or similar organization or group. 19 ALR 2d 388.

94-3550. (11579) Repealed.

Repeal

This section (Sec. 2514, Civ. C. 1895; Sec. 1, Ch. 9, L. 1917; Sec. 1, Ch. 219, L. 1965), relating to the penalty for defrauding inn- and hotel-keepers, was repealed by Sec. 2, Ch. 135, Laws 1967. For new law, see sec. 94-1831.

94-3565. (11531) **Ditch overflowing on highway.** Every person who owns, constructs or uses a ditch or flume, and allows the water therein to flow onto a public highway, or in or upon the property of another, is punishable by a fine not exceeding one hundred dollars ($100).

History: En. Sec. 1162, Pen. C. 1895; re-en. Sec. 8835, Rev. C. 1907; re-en. Sec. 11531, R. C. M. 1921; amd. Sec. 12-108, Ch. 197, L. 1965.

Amendment

The 1965 amendment inserted "constructs or uses" after "owns"; and substituted "flow onto" for "overrun the side and run into" before "a public highway."

Repealing Clause

Section 12-109 of Ch. 197, Laws 1965 read: "Sections 16-1004.1, 16-1118, 16-1127, 16-1128, 16-2009, 16-2201, 16-2202, 16-2203, 16-2204, 16-3311, 16-3312, 32-102, 32-103, 32-104, 32-105, 32-106, 32-107, 32-201, 32-202, 32-203, 32-204, 32-205, 32-206, 32-207, 32-208, 32-302, 32-303, 32-304, 32-305, 32-306, 32-307, 32-308, 32-309, 32-310, 32-311, 32-312, 32-313, 32-314, 32-316, 32-401, 32-402, 32-403, 32-404, 32-405, 32-406, 32-407, 32-408, 32-409, 32-410, 32-411, 32-412, 32-413, 32-415, 32-416. 32-501, 32-502, 32-503, 32-504, 32-505, 32-506, 32-507, 32-509, 32-510, 32-511, 32-512, 32-513, 32-514, 32-515, 32-516, 32-517, 32-518, 32-519, 32-520, 32-521, 32-522, 32-523, 32-524, 32-525, 32-526, 32-601, 32-602, 32-701, 32-702, 32-703, 32-704, 32-705, 32-706, 32-707, 32-708, 32-709, 32-710, 32-711, 32-713, 32-714, 32-715, 32-901, 32-902, 32-903, 32-904, 32-905, 32-1002, 32-1003, 32-1004, 32-1005, 32-1006, 32-1007, 32-1008, 32-1009, 32-1010, 32-1012, 32-1013, 32-1014, 32-1016, 32-1301, 32-1601, 32-1602, 32-1603, 32-1604, 32-1604.1, 32-1605, 32-1606, 32-1606.1, 32-1607, 32-1608, 32-1609, 32-1610, 32-1613, 32-1614, 32-1615, 32-1615.1, 32-1615.2, 32-1615.3, 32-1616, 32-1617, 32-1618, 32-1620, 32-1622, 32-1623, 32-1624, 32-1625, 32-1626, 32-1801, 32-1802, 32-1803, 32-1804, 32-1901, 32-1902, 32-1903, 32-1904, 32-1905, 32-1906, 32-1907, 32-1908, 32-1909, 32-1910, 32-1911, 32-1912, 32-1913, 32-1914, 32-1915, 32-2001, 32-2002, 32-2003, 32-2004, 32-2005, 32-2006, 32-2007, 32-2008, 32-2009, 32-2009.1, 32-2010, 53-615, 53-615.1, 53-616, 53-617, 53-618, 53-619, 53-621, 53-622, 53-623, 53-628, 53-629, 53-630, 53-631, 53-634, 53-635, 53-636, 53-637, 53-638, 53-639, 53-643, 84-1812(1), 84-1812(2), 84-1815, 84-1817, 89-821, 89-822, 94-3201, R. C. M. 1947, are repealed."

Separability Clause

Section 12-110 of Ch. 197, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 12-111 of Ch. 197, Laws 1965 read "This act shall be effective on December 31, 1966."

94-3573. (11567) Repealed.

Repeal

This section (Sec. 1, Ch. 66, L. 1907), relating to the showing of motion pictures depicting crimes, was repealed by Sec. 1, Ch. 52, Laws 1959, effective February 26, 1959.

94-3576. (10988) **False imprisonment, definition and punishment.**

Failure to Take Person Promptly before Magistrate

In an action for false imprisonment brought by plaintiff against a sheriff and the surety on his official bond based on unnecessary delay in taking plaintiff before a magistrate, it was necessary that the plaintiff prove that a magistrate was available on the particular day when the false imprisonment allegedly occurred. Rounds v. Bucher, 137 M 39, 349 P 2d 1026.

94-3579. (11565) **Firearms—use of by children under the age of fourteen years prohibited.** It shall be unlawful for any parent, guardian, or other person, having the charge or custody of any minor child under the age of fourteen years, to permit such minor child to carry or use any firearms of any description, loaded with powder and lead, in public, except when such child is in the company of such parent or guardian or under the supervision of a qualified firearms safety instructor, who has been duly authorized by such parent or guardian.

History: En. Sec. 1, Ch. 111, L. 1907; Sec. 8879, Rev. C. 1907; re-en. Sec. 11565, R. C. M. 1921; amd. Sec. 1, Ch. 139, L. 1963.

Amendment

The 1963 amendment added "or under the supervision of a qualified firearms safety instructor, who has been duly authorized by such parent or guardian" at the end of the section.

Effective Date

Section 2 of Ch. 139, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 2, 1963.

94-35-102, 94-35-103. (11314, 11259) **Repealed.**

Repeal

These sections (Sec. 1, Ch. 84, Laws 1903 and Sec. 696, Pen. C. 1895), relating to the prohibition against Indians carrying firearms while off the reservation, were repealed by Sec. 1, Ch. 12, Laws 1953.

94-35-106. Intoxicating liquors—penalty for giving or selling to any person under the age of twenty-one years. Any person who shall sell, give away or dispose of intoxicating liquor to any persons under the age of twenty-one (21) years, shall for the first offense be subject to punishment not exceeding five hundred dollars ($500.00) fine or by imprisonment not to exceed six (6) months in the county jail, or both such fine and imprisonment, and upon conviction for the second and subsequent offenses he shall be subject to punishment by fine of not less than five hundred dollars ($500.00) nor more than two thousand dollars ($2,000.00) or by imprisonment in the state penitentiary for not less than one (1) year nor more than five (5) years, or by both such fine and imprisonment. Nothing herein contained shall prevent the furnishing of intoxicating liquor to a person under twenty-one (21) years of age upon any physician's prescription where authorized by the laws of this state or the United States, nor the furnishing of wine for sacramental purposes.

History: En. Sec. 1, Ch. 143, L. 1949.

Compiler's Note

The section appearing in the parent volume (Sec. 1, Ch. 122, Laws 1927 as amended Sec. 1, Ch. 124, Laws 1941 and appearing in Revised Codes 1935 as Sec. 11048.1) was held to have been impliedly repealed by Ch. 105, Laws 1933 in State v. Holt, 121 M 459, 194 P 2d 651, and was specifically repealed by Sec. 3, Ch. 143, Laws 1949, and therefore the law set out above (Sec. 1, Ch. 143, Laws 1949) covering the same subject-matter has been given the same section number.

Title of Act

An act preventing the selling or giving away of intoxicating liquor to persons under twenty-one (21) years of age; pro-

viding penalties therefor: and repealing Section 11048.1 as amended by Chapter 124 of the Laws of the Twenty-seventh Legislative Assembly of the State of Montana, 1941, and all other acts and parts of acts in conflict herewith.

Alcoholic Content of Beer

It is not necessary that the information or the evidence show the alcoholic content of the beer in order to obtain a conviction. State v. Winter, 129 M 207, 285 P 2d 149, 156.

Construction

Under the above statute the selling to a minor is an offense without regard to whether the defendant had a license to sell or not. State v. Winter, 129 M 207, 285 P 2d 149, 155.

Entrapment

Defense of entrapment would not be available to a bar owner in a prosecution for selling liquor to a minor where it was shown that the public officers had given a minor money and sent him into the bar to purchase the liquor in order to obtain evidence. State v. Parr, 129 M 175, 283 P 2d 1086, 55 ALR 2d 1313. (Dissenting opinion, 129 M 175, 283 P 2d 1086, 1090.)

Operation and Effect

Misrepresentation of age by a minor is not a defense and a seller of intoxicating beverages must know the age of the purchaser and whatever false representations are made or precautions taken are immaterial where, in fact, the purchaser is under the age of twenty-one. State v. Paskvan, 131 M 316, 309 P 1019, 1021.

The purchaser under the age of twenty-one is not an accomplice to the seller. The purchaser has committed a crime too, but his is knowingly misrepresenting his qualifications for the purpose of obtaining liquor under section 4-413 the penalty for which is found in section 4-439. State v. Paskvan, 131 M 316, 309 P 2d 1019, 1020.

Proof of Offense

Corpus delicti may be proved by evidence that the defendant poured minor a drink from a bottle marked "Vodka." State v. Moore, 138 M 379, 357 P 2d 346, 348.

Validity

This section was not impliedly repealed by section 4-330 as amended by chapter 166, Laws of 1951. State v. Winter, 129 M 207, 285 P 2d 149, 156.

References

Cited or applied in State v. Wild, 130 M 476, 305 P 2d 325, 327.

Collateral References

Right to hearing before revocation or suspension of liquor license. 35 ALR 2d 1067.

94-35-106.1. Jurisdiction of offenses. In cases of prosecution for first offenses under this act, the justice courts and district courts of the state of Montana shall have concurrent original jurisdiction. In all other cases the district courts of the state of Montana shall have exclusive original jurisdiction for violation of the provisions of this act.

History: En. Sec. 2, Ch. 143, L. 1949.

Repealing Clause

Section 3 of Ch. 143, Laws 1949 repealed section 11048.1, Revised Codes 1935, as amended by chapter 124, Laws 1941 and all other acts or parts of acts in conflict therewith.

Validity

This section was not repealed by implication by the amendment of section 4-413 by Ch. 71, Laws 1953. State v. Wild, 130 M 476, 305 P 2d 325, 328.

Any amendment of this section by Ch. 71, Laws 1953 (4-413) is governed by the provisions of section 43-510 which provides that "where a section or a part of a statute is amended, it is not to be considered as having been repealed and re-enacted but the portions which are not altered are to be considered as having been the law from the time when they were enacted." State v. Wild, 130 M 476, 305 P 2d 325, 328.

There is nothing in Ch. 71, Laws 1953 (4-413) which conflicts with the provisions of this section. State v. Wild, 130 M 476, 305 P 2d 325, 328.

References

Cited or applied in State v. Winter, 129 M 207, 285 P 2d 149, 155.

94-35-106.2. Possession of beer or liquor by minor—misdemeanor. Any person who shall not have reached the age of twenty-one (21) years and who shall have in his or her possession beer or liquor, shall be guilty of a misdemeanor.

History: En. Sec. 1, Ch. 125, L. 1957.

Title of Act

An act prohibiting the possession of beer and liquor by persons under the age of twenty-one (21) years; providing a penalty.

94-35-107. (11048.2) **"Intoxicating liquor" defined.**

Vodka

While this section does not use the word vodka it does make any beverage containing more than one-half of one per cent of alcohol an intoxicating liquor and the court may take judicial notice of the commonly accepted and generally understood definition of the word "vodka" under section 93-501-1. State v. Wild, 130 M 476, 305 P 2d 325, 334.

94-35-122. (10948) **Maliciously procuring warrant.**

References

Cited in Wolf v. Colorado, 338 U S 30, 93 L Ed 1782, 69 S Ct 1359.

94-35-123. (3202.1) **Unlawful to dispense mescal button.** That it shall be unlawful for any person, firm, corporation or association to sell, furnish, or give away, or offer to sell, furnish, or give away, or have in his or its possession Peyote (Pellote), botanically known as Lophophora Williamsii; or Agava Americana, commonly known as the Mescal Button; or any compound, derivative, or preparation thereon; provided that the terms of this act shall not apply to transporting, possession or using said Peyote for religious sacramental purposes by any bona fide religious organization incorporated under the laws of the state of Montana.

History: En. Sec. 1, Ch. 22, L. 1923; amd. Sec. 1, Ch. 53, L. 1957.

Amendment

The 1957 amendment added the proviso clause.

Repealing Clause

Section 2 of Ch. 53, Laws 1957 repealed all acts or parts of acts in conflict therewith.

94-35-143. (10952) **Oppression and injury by an officer.**

References

Cited in Wolf v. Colorado, 338 U S 30, 93 L Ed 1782, 69 S Ct 1359.

94-35-152. (11572) **Repealed.**

Repeal

This section (Sec. 1, Ch. 32, L. 1911), relating to labeling of prison-made goods, was repealed by Sec. 101, Ch. 199, Laws 1965.

94-35-152.1 to 94-35-152.18. Repealed.

Repeal

These sections (Secs. 1 to 18, Ch. 162, L. 1953; Sec. 229, Ch. 147, L. 1963), relating to prison industries, were repealed by Sec. 101, Ch. 199, Laws 1965.

94-35-153 to 94-35-162. (11573 to 11573.9) **Repealed.**

Repeal

These sections (Sec. 2, Ch. 32, Laws 1911; Secs. 1 to 9, Ch. 172, Laws 1933; amd. Sec. 1, Ch. 9, Ex. L. 1933), relating to prison-made goods, were repealed by Sec. 19, Ch. 162, Laws 1953 effective March 3, 1953.

94-35-167. (11231) **Public nuisances defined.**

References

Cited or applied in State ex rel. Harrison v. Deniff, 126 M 109, 245 P 2d 140.

94-35-169. (10928) **Public officers—resisting in the discharge, etc.**

Unlawful Arrest

In action for damages for unlawful arrest which occurred after store manager handed plaintiff's check to officer and plaintiff seized check from officer's hand, arrest could not be justified as for violation of this section since plaintiff had right to possession of the check. Harrer v. Montgomery Ward & Co., 124 M 295, 221 P 2d 428, 435.

94-35-204. (11552.1) **Stolen livestock—seizure and confiscating of vehicle used to transport.** The use of any vehicle for the transportation of any stolen mule, horse, mare, colt, foal, filly, sheep, lamb, cow, calf, heifer, steer, bull, hogs, poultry, or the products of either thereof, shall be unlawful and such vehicle shall be forfeited to and confiscated by the state. Any such vehicle found in such use, or upon probable cause believed to be devoted wholly or in part to such use, shall be seized and held and, upon conviction in a proceeding in the name of the state of Montana against such vehicle, or against such vehicle and the owner, before any district court or judge thereof, shall be confiscated and sold; provided that such vehicle shall not be confiscated, or subject to forfeiture, if the same be a stolen vehicle at the time it is used for such unlawful transportation and the owner thereof is not in collusion with the party or parties guilty of the theft.

History: En. Sec. 1, Ch. 80, L. 1931; amd. Sec. 1, Ch. 132, L. 1963.

Amendment

The 1963 amendment substituted "mule, horse, mare, colt, foal, filly, sheep, lamb" for "sheep" in the first sentence.

94-35-216. (11039) **Sunday—certain activities on, forbidden.**

Collateral References

Construction of statute or ordinance prohibiting or regulating sports and games on Sunday. 24 ALR 2d 813.

94-35-221.1. Failure to relinquish party line or telephone for emergency call—penalty. Any person who fails to relinquish a telephone party line or a public pay telephone after he has been requested to do so to permit another to place an emergency call to a fire department or police department, or for medical or spiritual aid or ambulance service, is punishable by imprisonment for not more than ten (10) days or by a fine of not more than twenty-five dollars ($25.00) or by both such imprisonment and such fine.

History: En. Sec. 1, Ch. 206, L. 1961.

Title of Act

An act relating to use of telephones, to provide a penalty for failure to relinquish a party line or public pay telephone in an emergency; and to provide a penalty for false representation of an emergency in order to use a party line or public pay telephone.

94-35-221.2. Lack of knowledge as defense—emergency as defense. It is a defense to prosecution under section 1 [94-35-221.1] of this act that the accused did not know or did not have reason to know of the emergency in question, or that the accused was himself using the telephone party line or public pay telephone for such an emergency call.

History: En. Sec. 2, Ch. 206, L. 1961.

94-35-221.3. False pretext of emergency—penalty. Any person who requests another to relinquish a telephone party line or a public pay telephone on the pretext that he must place an emergency call, knowing

such pretext to be false, is punishable by imprisonment for not more than ten (10) days or by a fine of not more than twenty-five dollars ($25.00) or by both such imprisonment and such fine.

History: En. Sec. 3, Ch. 206, L. 1961.

94-35-221.4. Printing of act in directories. Every telephone company doing business in this state shall print a copy of sections 1, 2 and 3 [94-35-221.1 to 94-35-221.3] of this act in each telephone directory published by it after the effective date of this act.

History: En. Sec. 4, Ch. 206, L. 1961.

94-35-221.5. Abuse, harassment or extortion by telephone—evidence of intent—venue of offenses—penalty. (1) It is unlawful for any person, with intent to terrify, intimidate, threaten, harass, annoy or offend, to telephone another and use any obscene, lewd or profane language or suggest any lewd or lascivious act, or threaten to inflict injury or physical harm to the person or property of any person. It is also unlawful to use a telephone to attempt to extort money or other thing of value from any person, or to disturb by repeated anonymous telephone calls the peace, quiet or right of privacy of any person at the place where the telephone call or calls were received.

(2) The use of obscene, lewd or profane language or the making of a threat or lewd or lascivious suggestion shall be prima facie evidence of intent to terrify, intimidate, threaten, harass, annoy or offend.

(3) Any offense committed by use of a telephone in the manner set forth in this section shall be deemed to have been committed at either the place where the telephone call or calls originated or at the place where the telephone call or calls were received, and when an offense under this section is committed by making a telephone call or calls in one county which is or are received in another county, the jurisdiction is in either county.

(4) Any violation of this section shall be punishable by a fine not exceeding five hundred dollars ($500), or by imprisonment in the county jail not exceeding six (6) months, or by imprisonment in the state prison not exceeding five (5) years.

History: En. Sec. 1, Ch. 25, L. 1967.

Title of Act

An act making it a criminal offense to use a telephone either to terrify, intimidate, threaten, harass, annoy or offend another by the use of obscene, lewd or profane language or the suggestion of a lewd or lascivious act or by threat of injury to person or property, or to attempt to extort money or property from another, or to disturb another by repeated anonymous calls, and providing penalties therefor; providing for prosecution of such offenses at either the place where the telephone call or calls originated or where they were received; and repealing all acts and parts of acts in conflict therewith.

94-35-221.6. False statements to harass by telephone—venue of offenses. Every person who telephones another and knowingly makes any false statements concerning injury, death, disfigurement, indecent conduct or criminal conduct of the person telephoned or any member of his family with intent to terrify, intimidate, harass or annoy the called person is

guilty of a misdemeanor. Any offense by use of a telephone as herein set out may be deemed to have been committed at the place at which the telephone call or calls were made or at the place where the telephone call or calls were received.

History: En. Sec. 2, Ch. 25, L. 1967.

Repealing Clause
Section 3 of Ch. 25, Laws 1967 repealed all acts and parts of acts in conflict therewith.

94-35-258. Endurance races of horses prohibited. It shall be unlawful for any person, firm, corporation, association or organization within the state of Montana to sponsor, promote, conduct, or participate in sponsoring, promoting or conducting any horse race, commonly known as an endurance race, for a distance of more than two (2) miles.

History: En. Sec. 1, Ch. 27, L. 1949.

Title of Act
An act prohibiting endurance races of more than two miles; providing a penalty; and repealing all acts in conflict.

Collateral References
Animals⇐40.
3 C.J.S. Animals § 70.

94-35-259. Penalty for running endurance horse race. Any person, firm, corporation, association, or organization violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than two hundred fifty dollars ($250.00) or more than five hundred dollars ($500.00) or by imprisonment in the county jail of not less than ninety [90] days or more than one [1] year.

History: En. Sec. 2, Ch. 27, L. 1949.

Repealing Clause
Section 3 of Ch. 27, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Collateral References
Animals⇐41.
3 C.J.S. Animals § 75.

94-35-260. State tax stamps—failure to affix or cancel—removal—penalty—counterfeiting tax stamp or insignia of Montana or other state—penalty. (a) Every person required by law to affix any tax stamp or insignia of the state of Montana, to or upon any article to evidence the payment of a tax or license thereon, who shall fail, neglect or refuse to affix such stamp or insignia thereto, or to affix it in the proper place, or to cancel it, in the manner and as required by law, or as required by rules and regulations of the state board of equalization of this state when charged with administering any act relating thereto, or who shall wilfully remove any such affixed stamp or insignia from any such article and affix it to another such article required by law to be so stamped or marked, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not less than thirty (30) days, nor more than six (6) months, or by a fine of not less than one hundred dollars ($100.00), nor more than three hundred dollars ($300.00), or by both such fine and imprisonment.

(b) Every person without authority of law, who shall wilfully make, print, manufacture, counterfeit, or attempt to make, print, manufacture or counterfeit any such stamp or insignia of the state of Montana or of any other state, or who shall, without authority of law, have in his possession

any such counterfeit stamp or insignia, die, equipment or material for the making, printing, manufacturing or counterfeiting of any such stamp or insignia, or who shall be concerned therewith, is guilty of a felony and shall be punished by imprisonment in the state prison not less than one (1) year, nor more than five (5) years, or by a fine of not less than one thousand dollars ($1,000.00), nor more than five thousand dollars ($5,000.00), or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 43, L. 1949.

Title of Act

An act relating to tax stamps or insignia of the state of Montana; providing penalty for counterfeiting any such stamp or insignia, or having possession thereof, or being concerned therewith; prescribing penalty for re-using any such stamp or insignia, and for failure or refusal to properly affix any such stamp or insignia, or to properly cancel any such stamp.

Repealing Clause

Section 2 of Ch. 43, Laws 1949 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 43, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved February 23, 1949.

Collateral References

Counterfeiting⚖6; Licenses⚖40.

20 C.J.S. Counterfeiting § 9; 53 C.J.S. Licenses § 66.

94-35-261. Importing or selling farm machinery with altered, defaced or removed serial number. No person, firm or corporation shall import, or cause to be imported into the state of Montana any tractor, forage blower, combine, thresher, forage harvester, hay baler, power mower or any other item of heavy farm machinery on which the serial numbers have been destroyed, removed, altered, covered or defaced; nor transport, sell, offer for sale or otherwise dispose of any such farm implements or machinery within the state of Montana knowing the same to have been imported in violation of this act.

History: En. Sec. 1, Ch. 167, L. 1953.

Title of Act

An act prohibiting the importation into Montana of farm implements or machinery on which the serial numbers have been destroyed, removed, altered, covered or defaced; prohibiting the destruction, removal, alteration, covering or defacing of the serial numbers on farm implements or machinery; prohibiting the transportation or offering for sale, selling or otherwise disposing of farm implements or machinery knowing the same to have been imported into Montana in violation of this act and providing penalties for the violating hereof.

94-35-262. Altering, defacing or removing serial number on farm machinery. No person, firm, association or corporation shall destroy, remove, alter, cover, or deface the manufacturer's serial numbers from any tractor, forage blower, combine, thresher, forage harvester, hay baler, power mower or any other item of heavy farm machinery having such numbers.

History: En. Sec. 2, Ch. 167, L. 1953.

94-35-263. Penalty. Any wilful violation of any of the provisions of this act shall constitute a misdemeanor.

History: En. Sec. 3, Ch. 167, L. 1953.

94-35-264. Furnishing certain articles to and receiving articles from prisoners in state prison—receiving such articles by prisoners—felony. (1) A person may not furnish or attempt to furnish to an inmate of the state

prison, nor may an inmate receive or attempt to receive any of the following items without the consent of the warden:

(a) Any liquid containing one-half of one per cent (½ of 1%) or more of alcohol by volume which is fit for use for a beverage.

(b) Knives, razors, drugs, narcotics, guns, ammunition, ropes, ladders, money or clothing other than that issued at the prison.

(2) A person, including a member of the correctional staff, may not receive or attempt to receive from an inmate, for his own use or for transmittal to another inmate or some one outside the prison, any money, merchandise, or messages.

(3) A person who violates this section is punishable upon conviction, by imprisonment in the state prison for a term not exceeding ten (10) years, or a fine not exceeding ten thousand dollars ($10,000), or both.

History: En. Sec. 1, Ch. 177, L. 1953; amd. Sec. 77, Ch. 199, L. 1965.

Title of Act

An act providing that any person who without the consent of the warden, shall furnish or attempt to furnish, or aid or assist in furnishing to any prisoner confined in the state prison, any alcohol, brandy, whiskey, rum, gin, beer, ale, porter, wine, spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing one-half (½) of one per centum (1%) or more of alcohol by volume which are fit for use for beverage purposes, knives, razors, drugs, narcotics, guns, ammunition, ropes, ladders, clothing, or money to such prisoner, or any prisoner who, without the consent of the warden, shall receive, attempt to receive, or aid or assist in receiving or attempting to receive any of such things, shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for a term not exceeding ten (10) years, or a fine not exceeding ten thousand dollars ($10,000), or both.

Amendment

The 1965 amendment divided this section into numbered subsections and lettered paragraphs; inserted new provisions in subsection (2); and made numerous minor changes in phraseology and punctuation.

Repealing Clause

Section 2 of Ch. 177, Laws 1953 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 177, Laws 1953 provided the act should be in effect upon its passage and approval. Approved March 4, 1953.

Collateral References

Prisons⇐17½.
72 C.J.S. Prisons § 22.

94-35-265. Abandoning or permitting abandoned icebox in dangerous condition—penalty. Any person, firm or corporation abandoning or discarding in any place accessible to children any refrigerator, icebox or ice chest, of a capacity of one and one-half cubic feet or more, which has an attached lid or door which may be opened or fastened shut by means of an attached latch, or who, being the owner, lessee, or manager of such place, knowingly permits such abandoned or discarded refrigerator, icebox or ice chest to remain in such condition, shall be deemed negligent as a matter of law and shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than fifty dollars ($50.00), or imprisoned not more than thirty (30) days, or both.

History: En. Sec. 1, Ch. 126, L. 1955.

Title of Act

An act providing penalties for abandoning or discarding refrigerators, iceboxes or ice chests with attached doors or lids in places accessible to children; providing persons knowingly permitting such conditions to exist to be negligent in addition to penalties and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 126, Laws 1955 repealed all acts and parts of acts in conflict therewith.

94-35-266 to 94-35-268. Repealed.

Repeal

These sections (Secs. 1-3, Ch. 139, L. 1955; Sec. 1, Ch. 15, L. 1957), relating to life saving equipment on boats, were repealed by Sec. 20, Ch. 285, Laws 1959, effective March 18, 1959.

94-35-269. Hunting in careless or reckless manner—failure to assist person injured or wounded—misdemeanor. Any person who, in the act of pursuing, taking or killing game animals or game birds, shall act in a careless or reckless manner, or with wanton disregard of human life or property, or who knowingly fails to give all reasonable assistance to any person whom he has injured or wounded, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and upon conviction thereof, be punished as provided by law.

History: En. Sec. 1, Ch. 189, L. 1955.

Title of Act

An act providing for the prosecution of careless, reckless and negligent hunters, and for imposing of penalties upon conviction thereof.

94-35-270. Delivery of grain containing toxic chemicals to public warehouses. It shall be unlawful for any person, firm, corporation or association, to deliver to any public warehouse, any grain in bulk, if such grain contains toxic chemicals, providing such person, firm, corporation or association knew, or upon the exercise of reasonable diligence, could have known of the presence of toxic chemicals in the grain.

History: En. Sec. 1, Ch. 9, L. 1957.

Title of Act

An act making it unlawful to deliver to any public warehouse any grain in bulk containing toxic chemicals if the person, firm, corporation or association delivering such grain knew, or by the exercise of reasonable diligence, could have known, of the presence of such toxic chemicals; providing that such delivery shall constitute a misdemeanor and providing penalties therefor; and repealing all acts and parts of acts in conflict herewith.

94-35-271. Penalty for violation. Any person, firm, corporation or association violating the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars ($500.00) and not less than two hundred fifty dollars ($250.00) or be imprisoned for not more than six (6) months and not less than thirty (30) days, or both.

History: En. Sec. 2, Ch. 9, L. 1957.

Repealing Clause

Section 3 of Ch. 9, Laws 1957 repealed all acts and parts of acts in conflict therewith.

94-35-271.1. Coloration of wheat, oats, rye or barley treated with injurious or toxic substances. Any wheat, oats, rye or barley treated with any injurious or toxic substance or chemical shall at the same time be colored or dyed a color contrasting with the natural color of such wheat, oats, rye or barley, so that the treated wheat, oats, rye or barley is readily identifiable as having been treated with an injurious or toxic substance or chemical.

History: En. Sec. 1, Ch. 80, L. 1959.

Title of Act

An act to provide for the coloration of wheat, oats, rye or barley when being treated with an injurious or toxic substance or chemical, providing a penalty; and repealing all acts or parts of acts in conflict herewith.

94-35-271.2. Sale or offering for sale product in violation of act prohibited. No person, firm, corporation or association shall sell or offer for sale, any wheat, oats, rye or barley which has been treated with any injurious or toxic substance or chemical unless the wheat, oats, rye or barley has been colored or dyed a color contrasting with the natural color of the wheat, oats, rye or barley. This act shall not apply to the treatment of any wheat, oats, rye or barley which solely is for the killing of insects which might be present therein. Provided, however, that if such treatment uses any injurious or toxic substance for the killing of insects, then such grain must be colored or dyed as hereinabove provided if offered for sale.

History: En. Sec. 2, Ch. 80, L. 1959.

94-35-271.3. Violation constitutes misdemeanor. Any person, firm, corporation or association violating any of the provisions of this act shall be guilty of a misdemeanor.

History: En. Sec. 3, Ch. 80, L. 1959.

Repealing Clause

Section 4 of Ch. 80, Laws 1959 repealed all acts and parts of acts in conflict therewith.

94-35-272. Unlawful operation, use, interference, or tampering of aircraft—penalty. Every person who shall wilfully operate or use any aircraft without the consent of the owner, or who shall wilfully interfere or tamper with any aircraft without the consent of the owner, or who shall wilfully put into operation the engine of any aircraft without the consent of the owner, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not more than six (6) months or by a fine of not more than five hundred dollars ($500.00) or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 83, L. 1957.

Title of Act

An act making it a misdemeanor for any person to wilfully use or operate any aircraft, or wilfully interfere or tamper with any aircraft, or wilfully put into operation the engine of any aircraft, without the consent of the owner; providing a penalty for such offense; and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 83, Laws 1957 repealed all acts and parts of acts in conflict therewith.

94-35-273. Switch blade knives—possession, selling, using, giving, or offering for sale—penalty—collectors. Every person who carries or bears upon his person or who carries or bears within or on any motor vehicle or other means of conveyance owned or operated by him or who owns, possesses, uses, stores, gives away, sells or offers for sale, a switch blade knife shall be punished by a fine not exceeding five hundred dollars ($500.00) or by imprisonment in the county jail for a period not exceeding six (6) months or by both such fine and imprisonment; provided, that a bona fide collector, whose collection is registered with the sheriff of the county in which said collection is located, is hereby exempted from the provisions of this act. For the purpose of this section a switch blade knife

is defined as any knife which has a blade one and one-half (1½) inches long or longer, which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.

History: En. Sec. 1, Ch. 243, L. 1957.

Title of Act

An act making it a criminal offense for any person to own, possess, carry, sell or display a switch blade knife, defining a switch blade knife, making it a criminal offense and providing a punishment therefor; providing for the effective date of said act and repealing all acts and parts of acts in conflict therewith.

Repealing Clause

Section 2 of Ch. 243, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 243, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 13, 1957.

94-35-274. Recording of conversation without knowledge of parties prohibited. It shall be unlawful to record or cause to be recorded by use of any hidden electronic or mechanical device which reproduces a human conversation without the knowledge of all parties to the conversation. Violation hereof shall constitute a misdemeanor.

History: En. Sec. 1, Ch. 228, L. 1965.

Title of Act

An act making the transcription or recording of human conversation without the knowledge of the parties thereto a misdemeanor; and excepting public officials and employees when in the performance of official duty; and persons speaking at public meetings or given warning of any such recording.

94-35-275. Public officials and public meetings exempt—warning of recording. Section 1 [94-35-274] of this act shall not apply to duly elected or appointed public officials or employees when such transcription or recording is done in the performance of official duty; and persons speaking at public meetings or given warning of such recording.

History: En. Sec. 2, Ch. 228, L. 1965.

CHAPTER 36—OBSCENITY—LITERATURE—INDECENT EXPOSURE —HOUSES OF ILL FAME—PROHIBITION OF CERTAIN ADVERTISEMENTS

Section 94-3601. Obscene literature.
94-3602. Penalty.
94-3604. Seizure of indecent articles authorized.
94-3605. Their character to be summarily determined.
94-3606. Their destruction.

94-3601. (11134) **Obscene literature.** (1) "Obscene" means that to the average person, applying contemporary standards, the predominant appeal of the matter, taken as a whole, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material, that the subject matter is designed for a specially susceptible audience, predominant appeal shall be judged with reference to such audience. If the subject matter is directed to minors under 18 years of age, predominant appeal shall be judged with reference to such class of minors.

"Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or

other pictorial representation of any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment machines or materials.

"Person" means any individual, partnership, firm, association, corporation, or other legal entity.

"Distribute" means to transfer possession of, whether with or without consideration.

"Knowingly" means having knowledge of the character and content of the subject matter or failure to exercise reasonable inspection which would disclose the content and character of the same.

(2) It is unlawful for any person to knowingly: send or cause to be sent, or bring or cause to be brought, into this state for sale or distribution, or in this state prepare, publish, print, exhibit, distribute, or offer to distribute, any obscene matter.

(3) It is unlawful for any person to knowingly: send or cause to be sent, or exhibit or distribute or offer to distribute any obscene matter to a minor under 18 years of age, while in possession of such facts that he should reasonably know that such person is a minor under 18 years of age.

(4) It is unlawful for any person, while in possession of such facts that he should reasonably know that a person is a minor under 18 years of age, to hire, employ or use such minor to do or assist in doing any of the acts described in the foregoing paragraphs.

(5) It is unlawful for a person to write or create advertising or solicit anyone to publish such advertising or otherwise promote the sale or distribution of matter represented or held out by him to be obscene.

(6) No person shall, as a condition to a sale or delivery for resale of any publication not above described or not within the purview of the foregoing section, require that the purchaser or consignee receive for resale or redistribution any other publication or article whatsoever within or reasonably believed by such purchaser or consignee to be within the purview of the foregoing paragraph.

(7) The prohibitions and penalties imposed hereby shall not extend to publications within any constitutional guarantee of freedom of the press or freedom of religious worship, nor to publications privileged for medical instruction, privileged as official law enforcement bulletins or publications, nor to publications or reproductions of bona fide works of literature and the fine arts.

(8) In any criminal action brought under the foregoing sections, both the people and the defendant shall have the right to trial by jury on the issue of obscenity.

(9) The jury, or the court, if a jury trial is waived, shall render a general verdict, and must also render a special verdict as to whether the matter named in the charge is obscene. The special verdict or findings on the issue of obscenity may be: "We find the ..... (title or description of matter) to be obscene." Or: "We find the ..... (title or description of matter) not to be obscene," as they find each item is or is not obscene.

History: En. Secs. 1, 2, p. 255, L. 1891; amd. Sec. 560, Pen. C. 1895; re-en. Sec. 8391, Rev. C. 1907; re-en. Sec. 11134, R. C. M. 1921; amd. Sec. 1, Ch. 214, L. 1955; amd. Sec. 1, Ch. 276, L. 1967.

Amendments

The 1955 amendment completely rewrote this section. For section prior to amendment see parent volume.

The 1967 amendment completely rewrote this section. Prior to amendment, it read, "(1) It is unlawful for any person to sell, lend, give away, distribute, resell, or redistribute, show, or have in his possession with intent to sell, give away, distribute, resell, or redistribute, or to show or advertise or otherwise offer for loan, gift, or distribution, to any minor child, under the age of eighteen (18) years, any book, pamphlet, magazine, newspaper, lewd picture, story paper, so-called comic book, or other printed, mimeographed or published matter, devoted to the publication or principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures and stories of lust or crime, or portraying sexually indecent conduct or subject matter, or portraying the planning or committing of deeds of crime, violence, horror, brutality, immorality or vice. It shall be unlawful to exhibit upon any street or highway, or in any place within the view of any minor child under the age of eighteen (18) years, or to hire, use, employ, or permit such child to sell or give away or in any manner distribute any such book, pamphlet, magazine, lewd picture, newspaper, story paper, so-called comic book or publication or other printed, mimeographed, or published matter above described. (2) The prohibitions and penalties imposed hereby shall not extend to publications within any constitutional guarantee of freedom of the press or freedom of religious worship, nor to publications privileged for medical instruction, privileged as official law enforcement bulletins or publications, nor to publications or reproductions of bona fide works of literature and the fine arts. (3) No person shall, as a condition to a sale or delivery for resale of any publication not above-described or not within the purview of the foregoing section, require that the purchaser or consignee receive for resale or redistribution any other publication or article whatsoever within or reasonably believed by such purchaser or consignee to be within the purview of the foregoing section."

Constitutionality

Justice Frankfurter in his dissenting opinion in the Winters Case considered this to be one of the statutes throughout the country that would fall under the majority decision in that case as "void for vagueness." Winters v. New York, 333 U S 523, 92 L Ed 853, 68 S Ct 674.

94-3602. (11135) **Penalty.** (1) Every person who violates section 94-3601 (2) is punishable by fine of not more than one hundred dollars ($100.00) plus five dollars ($5.00) for each additional unit of material coming within the provisions of this chapter, which is involved in the provisions of this chapter, which is involved in the offense, not to exceed one thousand dollars ($1,000) or by imprisonment for not more than 30 days. If such person has previously been convicted of a violation of this section, he is punishable by fine of not more than five hundred dollars ($500.00) plus five dollars ($5.00) for each additional unit of material coming within the provisions of this chapter, which is involved in the offense, not to exceed twenty-five hundred dollars ($2,500.00), or by imprisonment for not more than one year, or by both such fine and such imprisonment.

(2) Every person who violates sections 94-3601 (3), (4) or (5) is punishable by fine of not more than one hundred dollars ($100.00) or by imprisonment for not more than 30 days, or by both such fine and such imprisonment. If such person has been previously convicted of a violation of either of these sections, he is punishable by imprisonment in the state prison not exceeding two years.

(3) Every person who violates section 94-3601 (6) is punishable by fine of not more than one hundred dollars ($100.00) or by imprisonment for not more than 30 days, or by both such fine and imprisonment. For a second and subsequent offense he shall be punished by a fine of not

more than five hundred dollars ($500.00), or by imprisonment for not more than one year, or by both such fine and imprisonment.

History: En. Sec. 561, Pen. C. 1895; re-en. Sec. 8392, Rev. C. 1907; re-en. Sec. 11135, R. C. M. 1921; amd. Sec. 2, Ch. 214, L. 1955; amd. Sec. 2, Ch. 276, L. 1967.

Amendments

The 1955 amendment added the proviso clause.

The 1967 amendment completely rewrote this section. Prior to amendment, it read, "(1) Every person violating any of the provisions of the next preceding section is guilty of a misdemeanor, and provided further that upon the second and each subsequent conviction thereunder, a jail sentence is mandatory."

Separability Clause

Section 3 of Ch. 214, Laws 1955 read "If any clause, sentence, paragraph, section, subdivision or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, inoperative or unconstitutional, such decision shall not affect, impair or invalidate the remaining portions of this act, but shall be confined in its operation to the clause, sentence, paragraph, section, subdivision or part directly adjudged to be invalid, inoperative or unconstitutional."

Repealing Clause

Section 4 of Ch. 214, Laws 1955 repealed all acts or parts of acts in conflict therewith.

94-3604. (11137) **Seizure of indecent articles authorized.** Every person who is authorized or enjoined to arrest any person for a violation of section 94-3601 (2) or (3), is equally authorized and enjoined to seize any obscene matter found in possession, or under the control of the person so arrested, and to deliver the same to the district court.

History: En. Sec. 563, Pen. C. 1895; re-en. Sec. 8394, Rev. C. 1907; re-en. Sec. 11137, R. C. M. 1921; amd. Sec. 1, Ch. 230, L. 1965. Cal. Pen. C. Sec. 312.

Amendment

The 1965 amendment substituted the reference to section 94-3601(2) and (3) for a reference to subdivision 3 of section 94-3603; substituted "obscene matter" for "obscene or indecent writing, paper, book, picture, print, or figure"; and substituted "the district court" for "the magistrate before whom the person so arrested, is required to be taken."

94-3605. (11138) **Their character to be summarily determined.** If the seizure be controverted, the district court to whom any obscene matter is delivered pursuant to the foregoing section or to the return of a search warrant must, within ten (10) days after service of the motion for restoration proceed to take testimony in relation thereto. A decision as to whether there is a probable cause to believe the seized material to be obscene shall be rendered by the court within two (2) days of the conclusion of the restoration proceedings.

History: En. Sec. 564, Pen. C. 1895; re-en. Sec. 8395, Rev. C. 1907; re-en. Sec. 11138, R. C. M. 1921; amd. Sec. 2, Ch. 230, L. 1965. Cal. Pen. C. Sec. 313.

Amendment

The 1965 amendment completely rewrote this section. For previous text, see parent volume.

94-3606. (11139) **Their destruction.** Upon the conviction of the accused, such county attorney must cause any obscene matter, in respect whereof the accused stands convicted and which remains in the possession or under the control of such county attorney, to be destroyed.

History: En. Sec. 565, Pen. C. 1895; re-en. Sec. 8396, Rev. C. 1907; re-en. Sec. 11139, R. C. M. 1921; amd. Sec. 3, Ch. 230, L. 1965. Cal. Pen. C. Sec. 314.

Amendment

The 1965 amendment substituted "obscene matter" for "writing, paper, book, picture, print or figure."

94-3608. (11141) Keeping disorderly houses.

Illegal Use of Premises by Vendee

Where the vendee-madam sought to void mortgage given vendor-madam on property used exclusively for prostitution, on the grounds that vendor-madam knew the property was to be used in violation of the laws and public policy of Montana, bare knowledge of the illegal purpose was not sufficient to void the contract in the absence of more active participation on the part of the seller. Carroll v. Beardon, 142 M 40, 381 P 2d 295.

CHAPTER 38—PERJURY—SUBORNATION OF PERJURY

94-3801. (10878) Perjury defined.

Venue

Where prosecution for perjury is founded upon a false affidavit which was notarized in Lake County and delivered to Lewis and Clark County, apparently by mail, by virtue of section 94-3809, the crime was completed when the affidavit left the defendant with the requisite intent. If upon having the affidavit notarized the defendant then gave it to some other person to mail or mailed it himself, then the crime was committed and the proper county for venue was Lake County and not Lewis and Clark County. State v. Rother, 130 M 357, 303 P 2d 393. (Dissenting opinions, 130 M 357, 303 P 2d 393, at 397 and 409.)

94-3802. (10879) Oath defined.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393, 395.

94-3806. (10883) Irregularity in administering oath.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393, 394; (Dissenting opinion, 130 M 357, 303 P 2d 393 at 410.)

94-3808. (10885) Knowledge of materiality of testimony not necessary.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 410 (dissenting opinion).

94-3809. (10886) Making depositions, etc., when deemed complete.

Crime—When Complete

Under this section the crime of perjury is complete when the instrument is delivered by the accused to "any other person, with the intent that it be uttered or published as true." State v. Rother, 130 M 357, 303 P 2d 393, 395. (Dissenting opinions, 130 M 357, 303 P 2d 393 at 397, 409.)

Venue

Where prosecution for perjury is founded upon a false affidavit which was notarized in Lake County and delivered to Lewis and Clark County, apparently by mail, by virtue of this section the crime was completed when the affidavit left the defendant with the requisite intent. If upon having the affidavit notarized the defendant then gave it to some other person to mail or mailed it himself, then the crime was committed and the proper county for venue was Lake County and not Lewis and Clark County. State v. Rother, 130 M 357, 303 P 2d 393. (Dissenting opinions, 130 M 357, 303 P 2d 393 at 397, 409.)

94-3811. (10888) Punishment of perjury.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 410 (dissenting opinion).

CHAPTER 39—PUBLIC OFFICERS—OFFENSES BY

94-3908. (10828) Presenting fraudulent bills or claims for allowance, etc.

Operation and Effect

An information may be drawn consistent with section 94-1805 (obtaining money under false pretenses) which is not vulnerable to the objection that it is bad for duplicity for charging an offense under

this section. State v. Hale, 129 M 449, 291 P 2d 229, 234. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236), distinguished in 135 M 449, 453, 340 P 2d 157, 160, overruled on another point in 142 M 459, 462, 384 P 2d 749.

94-3918. (10923) Confessions obtained by duress, etc.

Confession Not Used in Proceedings

Where defendant's confession to murder was not introduced before the court at any stage in the proceedings, he was not allowed to withdraw his plea of guilty on the grounds that the confession was obtained from him illegally. Petition of Pine, 143 M 453, 391 P 2d 690.

Drugs

Where a sedative was given to a wounded defendant about an hour before he signed a confession to murder charge, the administration of the sedative did not make the confession ipso facto inadmissible and the determining question was whether at the time of the confession it was made voluntarily and of his free will. State v. Noble, 142 M 284, 384 P 2d 504.

References

Dryman v. State, 139 M 141, 361 P 2d 959.

94-3920. (10925) Importing persons to discharge duties, etc.

Operation and Effect

This section did not change the common-law rule respecting a sheriff's liability in damages. Annala v. McLeod, 122 M 498, 206 P 2d 811, 815.

CHAPTER 41—RAPE AND OTHER SEXUAL CRIMES

Section 94-4106. Lewd and lascivious acts upon children.
94-4120. Child under age of sixteen cannot be accomplice.

94-4101. (11000) Rape defined.

Evidence of Other Offenses

Where defendant was charged with attempted rape upon a female child under the age of 18 years, the admission of a transcribed statement in the form of questions by the county attorney and answers by the defendant showing that defendant had been warned about going out with girls under 18 and could have been charged with rape of a girl other than the prosecutrix, was prejudicial, was not waived by defendant's introduction of evidence to meet that of the state, and was of such nature that it could not be cured. State v. Tiedemann, 139 M 237, 362 P 2d 529, 532, distinguished in 144 M 401, 405, 396 P 2d 821.

Federal Law as to Indians

In the prosecution of an Indian for the crime of rape committed upon a 13-year-old female Indian on a reservation, an information which failed to charge that force had been employed or that consent of the victim was lacking failed to state an offense under the federal law which adopted the state law definition of rape. United States v. Rider, 282 F 2d 476.

Where an Indian was charged with rape of an Indian girl under eighteen on a reservation, the indictment failed to state an offense under the federal statute (18 U. S. C. § 1153), providing that an Indian who commits rape as defined by state law shall be imprisoned at the discretion of the court, because "rape" does not include "carnal knowledge" as rape is defined in this section, and because the federal law distinguishes between rape and carnal knowledge. United States v. Red Wolf, 172 F Supp 168.

Partial Repeal

Since this section is repealed by implication by Laws of 1943, Ch. 227 (10-601 et seq.), and the amendments thereof, insofar as it is in conflict with the substance and intent thereof, district criminal court was prohibited from trying child under the age of 16 years charged with rape. He was solely under the exclusive jurisdiction of the juvenile court. State ex rel. Dahl v. District Court, 134 M 395, 333 P 2d 495, 497, 499.

Statutory Rape

Any man who accomplishes an act of sexual intercourse with a female under the age of 18 years, when such female is not his wife, is guilty of the crime of statutory rape. The corpus delicti is sufficiently proved by the testimony of the prosecutrix that she had sexual intercourse with the accused at the time and place set forth in the information. State v. Reid, 127 M 552, 267 P 2d 986, 991.

References

Cited in State v. Lawrence, 122 M 277, 201 P 2d 756; State v. Sauter, 125 M 109, 232 P 2d 731, 734.

Collateral References

Bill of particulars to one accused of rape. 5 ALR 2d 559.

Inclusion or exclusion of day of birth in computing age of prosecutrix. 5 ALR 2d 1153.

Exclusion of women from juries in prosecutions for rape. 9 ALR 2d 661.

94-4102. (11001) When physical ability must be proved.

Partial Repeal

Laws 1943, Ch. 227 (10-601 et seq.), and the amendments thereof have repealed by implication this section and section 94-4101, insofar as they conflict with the substance and intent thereof and district criminal court was prohibited from trying child under the age of 16 years charged with rape. He was solely under the exclusive jurisdiction of the juvenile court. State ex rel. Dahl v. District Court, 134 M 395, 333 P 2d 495, 497, 499.

94-4106. (11005) Lewd and lascivious acts upon children. Any person over the age of eighteen (18) years, who shall wilfully and lewdly commit any lewd and lascivious act, other than the acts constituting other crimes provided in sections 94-4101 to 94-4108, upon or with the body or any part or member thereof, of a child under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person, or of such child, shall be guilty of a felony, and shall be imprisoned in the state prison not exceeding twenty-five (25) years.

History: En. Sec. 1, Ch. 59, L. 1913; re-en. Sec. 11005, R. C. M. 1921; amd. Sec. 1, Ch. 70, L. 1935; amd. Sec. 1, Ch. 57, L. 1959.

Amendment

The 1959 amendment raised the penalty in this section from five years to twenty-five years.

Age as Defense

The portion of this section giving an exemption to prosecution to a person under the age of eighteen years is a matter of defense, and negation thereof is not a necessary part of the information. State v. Davis, 141 M 197, 376 P 2d 727, 729.

Evidence of Similar Acts

Where alleged lewd and lascivious acts upon the person of a minor child below the age of 16 years were committed on or about March 19, 1955, it was improper to permit state to show similar acts to those charged as having been committed on August 4, 1951, and in June 1951 in the State of California because of the remoteness in time. State v. Nicks, 134 M 341, 332 P 2d 904, 905, 77 ALR 2d 836.

Information Held Sufficient

An information under this section was sufficient although it did not allege the age of the defendant. State v. Davis, 141 M 197, 376 P 2d 727, 729.

Subsequent Offense

A defendant convicted of a lewd and lascivious act upon a child under this section was properly sentenced to a term of not less than 10 years on a subsequent offense, pursuant to subd. 1 of section 94-4713, where the jury found that he had previously been convicted of lewd and lascivious acts upon a child. In re Davis' Petition, 139 M 622, 365 P 2d 948, 949.

Sufficiency of Evidence

Where medical testimony pertaining to defendant's antisocial nature and difficulty in controlling his sexual impulses may have established the defendant as a sexual deviate who should be confined for the protection of society, but was not sufficient to prove intent to commit a lewd and lascivious act upon a child, it was reversible error to convict the defendant of the felony. State v. Green, 143 M 234, 388 P 2d 362.

94-4109. (11008) Importation and exportation of females, etc.

Constitutionality

This section (94-4109) is void since Congress has legislated upon this matter in the Mann Act (U. S. C. Tit. 18, §§ 2421-2424). This section then, being in contravention of a valid law of the United States, is wholly void. Ex Parte Anderson, 125 M 331, 238 P 2d 910, 911, 912.

94-4118. (11030) Crime against nature.

Penetration by Mouth

The infamous crime against nature may be committed by penetration of the mouth. (following State v. Hoyt Guerin, 51 M

250, 152 P 747.) State v. Dietz, 135 M 496, 343 P 2d 539, 541.

Where Accomplice's Testimony Insufficiently Corroborated

Where the corroborating evidence to the testimony of the accomplice showed that accomplice slept with the defendant and stayed overnight at defendant's house on several occasions, such evidence was insufficient to sustain the conviction as it does nothing more than show opportunity on the part of defendant to have committed the crime. State v. Gangner, 130 M 533, 305 P 2d 338.

References

Cited or applied in State v. Searle, 125 M 467, 239 P 2d 995, 996; State v. Shambo, 133 M 305, 322 P 2d 657.

94-4119. (11031) Penetration sufficient to complete the crime.

Operation and Effect

There must be penetration before a person can be convicted of the infamous crime against nature. State v. Shambo, 133 M 305, 322 P 2d 657, 658.

94-4120. Child under age of sixteen cannot be accomplice. No child under the age of sixteen (16) years can be an accomplice to the commission or attempted commission of the infamous crime against nature.

History: En. Sec. 1, Ch. 68, L. 1951; amd. Sec. 1, Ch. 145, L. 1957.

Title of Act

An act declaring a child under the age of fourteen years incapable of being an accomplice to the infamous crime against nature.

Amendment

The 1957 amendment substituted "sixteen (16) years" for "fourteen (14) years" and inserted the words "or attempted commission."

Repealing Clauses

Section 2 of Ch. 68, Laws 1951 and Sec. 2 of Ch. 145, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 68, L. 1951 provided the act should be in effect from and after its passage and approval. Approved February 23, 1951.

CHAPTER 42—RESCUES AND ESCAPES

94-4202. (10865) Retaking goods from custody of officer.

Unlawful Arrest

In action for damages for unlawful arrest which occurred after store manager handed plaintiff's check to officer and plaintiff seized check from officer's hand, arrest could not be justified as for violation of this section since officer did not have check in his possession under any process of law. Harrer v. Montgomery Ward & Co., 124 M 295, 221 P 2d 428, 435.

94-4203. (10866) Escapes from state prison—punishment.

Consecutive Sentence

An escape sentence runs consecutively and not concurrently with the original sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 557.

Parole

The granting of a parole to an escape sentence by virtue of the wording of this section did not result in a discharge of the original sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 557.

This section does not deal with paroles and therefore, does not stand for the proposition that an inmate, who has escaped from prison, must serve his entire original sentence in prison plus his escape sentence upon apprehension before being considered for parole. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 557.

The word "discharge" as used in this section does not mean "release on parole." State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 557.

Sequence of Consecutive Sentences

Where petitioner was sentenced to serve consecutive sentences for escape and using an automobile without the consent of the owner, but the warden executed the sentences in a sequence reverse to that indicated by the court, there was no infringement on his rights and his petition for writ of habeas corpus was denied. Petition of Cheadle, 143 M 327, 389 P 2d 579.

Speedy Trial upon Escape Charge

Petitioner, who was presently confined

in the United States penitentiary at Leavenworth, Kansas, applied to the supreme court of Montana for writ of mandate to require the district court of Powell County, Montana, to grant him a speedy trial on an escape charge, averring that a detainer had been filed with that institution by the warden of the Montana state prison to which he had been sentenced to terms of eight years and five years to run concurrently. Since records showed that he had escaped from custody after having served one year, two months and thirteen days of his sentences and he would be returned to the state prison to complete his unexpired sentences, the application was denied by the supreme court. In re Well's Petition, 139 M 611, 362 P 2d 420, 421.

References

Cited or applied in State ex rel. Ball v. Burrell, 129 M 585, 292 P 2d 144.

CHAPTER 43—ROBBERY

94-4301. (10973) Robbery defined.

Fear

Under this section a robbery victim is put in the fear required by section 94-4302 when he is forced to look down the barrel of a 45-caliber automatic pistol held by a stranger whose purpose is to rob the victim. State v. Erickson, 141 M 118, 375 P 2d 314, 316.

94-4302. (10974) What fear may be an element in robbery.

Presumption

It is reasonable to presume fear where a robbery victim is forced to look down the barrel of a 45-caliber automatic pistol held by a stranger whose purpose is to rob his victim. State v. Erickson, 141 M 118, 375 P 2d 314, 316.

94-4303. (10975) Punishment of robbery.

References

State v. Knight, 143 M 27, 387 P 2d 22.

CHAPTER 44—SEDITION—CRIMINAL SYNDICALISM—DISPLAY OF RED FLAG—SUBVERSIVE ORGANIZATIONS

Section 94-4411. Subversive Organization Registration Law—title of act.
94-4412. Purpose of act.
94-4413. Subversive organization defined.
94-4414. Organization subject to foreign control defined.
94-4415. Exceptions from definition of subversive organization.
94-4416. Organization pursuant to law—no exemption.
94-4417. Rules and regulations.
94-4418. Information filed with secretary of state.
94-4419. Amendment of charter, constitution, by-laws or other regulations—filing with secretary of state.
94-4420. Change of officers or purposes—filing with secretary of state.
94-4421. Semiannual statement of members.
94-4422. Report of meetings authorizing political action.
94-4423. Statements filed with secretary of state are public records.
94-4424. Anonymous letters prohibited.
94-4425. Penalty of organization for violating act.
94-4426. Penalty of officer of organization.
94-4427. Penalty of member of organization.

94-4411. Subversive Organization Registration Law—title of act.

This act may be cited as the "Subversive Organization Registration Law."

History: En. Sec. 1, Ch. 215, L. 1951.

Title of Act

An act providing for the registration of certain societies, corporations, associations, political parties, assemblies, and other bodies and organizations; defining "subversive organizations," and requiring such organizations to file reports, documents and information with the secretary of state, and providing for the making of rules and regulations by the secretary of state; prohibiting the sending and delivery to nonmembers of letters, leaflets, and other written or printed matter, unless the same

bears the name of such organization and the names and addresses of its officers; and providing penalties for violations of this act.

94-4412. Purpose of act. This act is adopted in the exercise of the police power of this state for the protection of the public peace and safety by requiring the registration of subversive organizations which are conceived and exist for the purpose of undermining and eventually destroying the democratic form of government in this state and in the United States.

History: En. Sec. 2, Ch. 215, L. 1951.

94-4413. Subversive organization defined. As used in this title, "subversive organization" means every corporation, association, society, camp, group, political party, assembly, and everybody or organization composed of two [2] or more persons or members, which comes within all or any of the following descriptions:

(a) Which directly or indirectly advocates, advises, teaches, or practices, the duty, necessity, or propriety of controlling, conducting, seizing, or overthrowing the government of the United States, of this state, or of any political subdivision thereof by force or violence;

(b) Which is subject to foreign control as defined in section 4 [94-4414] hereof.

History: En. Sec. 3, Ch. 215, L. 1951.

94-4414. Organization subject to foreign control defined. An organization is "subject to foreign control" if it comes within either of the following descriptions:

(a) It solicits or accepts financial contributions, loans, or support of any kind directly or indirectly from, or is affiliated directly or indirectly with, a foreign government or a political subdivision thereof, an agent, agency, or instrumentality of a foreign government or political subdivision thereof, a political party in a foreign country, or an international political organization;

(b) Its policies, or any of them, are determined by or at the suggestion of, or in collaboration with, a foreign government or a political subdivision thereof, an agent, agency, or instrumentality of a foreign government or a political subdivision thereof, a political party in a foreign country, or an international political organization.

History: En. Sec. 4, Ch. 215, L. 1951.

94-4415. Exceptions from definition of subversive organization. "Subversive organization" does not include any labor union or religious, fraternal, or patriotic organizations, society, or association whose objectives and aims do not contemplate the overthrow of the government of the United States, of this state or of any political subdivision thereof by force or violence.

History: En. Sec. 5, Ch. 215, L. 1951.

94-4416. Organization pursuant to law—no exemption. This act imposes additional requirements upon corporations, associations, or organizations which are subversive organizations. Neither the fact that such a corporation, association, or organization was organized pursuant to law nor that

its affairs and activities are in any respect regulated by law exempts it from complying with this title.

History: En. Sec. 6, Ch. 215, L. 1951.

94-4417. Rules and regulations. The secretary of state may adopt and promulgate such rules and regulations as may be necessary to carry out the provisions of this title, and may alter, amend, or repeal such rules and regulations.

History: En. Sec. 7, Ch. 215, L. 1951.

94-4418. Information filed with secretary of state. Every subversive organization in existence on July 1, 1951, shall within thirty (30) days after that date, and every subversive organization thereafter organized shall within ten (10) days after its organization, file with the secretary of state, on such forms and in such detail as he may prescribe, the following information and documents:

(a) A complete and detailed statement subscribed, under oath, by all of its officers, showing all of the following:

(1) Its name and post office address;

(2) The names and addresses of all its branches, chapters, and affiliates;

(3) The names, nationalities, and residence addresses of its officers and members, and the qualifications required for membership in it;

(4) The nature and extent of its existing and proposed aims, purposes, and activities;

(5) The times and places of its meetings;

(6) The description and location of the real property and the kind, quantity, and quality of the personal property owned by it, its assets and liabilities, the methods for the financing of its activities, and the names and addresses of all persons, organizations, and other sources who or which have contributed money, property, literature, or other things of value to the organization or any of its branches, chapters or affiliates for any of its purposes;

(7) Such other information as the secretary of state may from time to time require.

(b) A true copy, certified by all of its officers, of all of the following:

(1) Its charter, articles of association, or constitution, and its by-laws, rules, and regulations;

(2) Its oath, affirmation, or pledge of membership, if any;

(3) Each agreement, resolution, and other instrument or document relating to its organization, powers, and purposes, and the powers and duties of its officers and members;

(4) Each book, pamphlet, leaflet, or other printed, written, or illustrated matter directly or indirectly issued or distributed by it or in its behalf, or to or by its members with its knowledge, consent, or approval;

(5) Such other documents as the secretary of state may from time to time require.

(c) A description of the uniforms, badges, insignia, or other means of identification prescribed by it, and worn or carried by its officers or members, or any of such officers or members.

(d) In case it is subject to foreign control, a statement of the manner in which it is subject.

History: En. Sec. 8, Ch. 215, L. 1951.

94-4419. Amendment of charter, constitution, by-laws or other regulations—filing with secretary of state. Every subversive organization shall within ten (10) days after any revision or amendment of, or other change with respect to, its charter, articles of association, constitution, by-laws, rules, regulations, oath, affirmation, or pledge of membership, or any part thereof, file with the secretary of state a true copy certified by all of its officers of the revised, amended, or changed charter, articles of association, constitution, by-laws, rules, regulations, oath, affirmation, or pledge of membership, or part thereof.

History: En. Sec. 9, Ch. 215, L. 1951.

94-4420. Change of officers or purposes—filing with secretary of state. Every subversive organization shall within ten (10) days after a change has been made in its officers, or in its aims, purposes, activities, property holdings, or methods and sources of financing its activities, file with the secretary of state a statement subscribed under oath by all of its officers showing the change.

History: En. Sec. 10, Ch. 215, L. 1951.

94-4421. Semiannual statement of members. Every subversive organization shall at least once in each period of six (6) months file with the secretary of state a statement subscribed under oath by all of its officers showing the names and residence addresses of all persons who have been admitted to membership during that period or, if no members have been admitted during that period, a statement to that effect similarly subscribed.

History: En. Sec. 11, Ch. 215, L. 1951.

94-4422. Report of meetings authorizing political action. Every subversive organization shall within ten (10) days after the adoption thereof file with the secretary of state, on such form and in such detail as he may prescribe, each resolution adopted, or the minutes of any meeting held by it, authorizing or providing for concerted action by its officers, members, or a part of its membership, to promote or prevent the passage of any act of legislation by any local, state, or federal legislative body, or to support or defeat any candidate for public office.

History: En. Sec. 12, Ch. 215, L. 1951.

94-4423. Statements filed with secretary of state are public records. All statements or documents filed with the secretary of state under this title [94-4411 to 94-4427] are public records and shall be open to public examination and inspection at all reasonable hours.

History: En. Sec. 13, Ch. 215, L. 1951.

94-4424. Anonymous letters prohibited. A subversive organization shall not send, deliver, mail or transmit, or suffer or permit to be sent, delivered, mailed, or transmitted, to any person in this state who is not a

member of the organization any anonymous letter, document, leaflet, or other written or printed matter. All letters, documents, leaflets, or other written or printed matter issued by a subversive organization which are intended to come to the attention of a person who is not a member of the organization shall bear the name of the organization and the name and residences of its officers.

History: En. Sec. 14, Ch. 215, L. 1951.

94-4425. Penalty of organization for violating act. Any subversive organization which violates any provisions of this title [94-4411 to 94-4427] is guilty of a felony punishable by fine of not less than one thousand dollars ($1,000.00) nor more than ten thousand dollars ($10,000.00). Any such violation constitutes a separate and distinct offense for each day, or part thereof, during which it is continued.

History: En. Sec. 15, Ch. 215, L. 1951.

94-4426. Penalty of officer of organization. Any officer or member of the board of directors, board of trustees, executive committee, or other similar governing body of a subversive organization who violates any provision of this title [94-4411 to 94-4427], or permits or acquiesces in the violation of any provision of this title by the organization is guilty of a felony punishable by fine of not less than five hundred dollars ($500.00) nor more than five thousand dollars ($5,000.00), or by imprisonment in a state prison for not less than six (6) months nor more than five (5) years, or by both.

History: En. Sec. 16, Ch. 215, L. 1951.

94-4427. Penalty of member of organization. Any person who becomes or remains a member of any subversive organization, or attends a meeting thereof, with knowledge that the organization has failed to comply with any provision of this title [94-4411 to 94-4427], is guilty of a misdemeanor punishable by fine of not less than ten dollars ($10.00) nor more than one thousand dollars ($1,000.00), or by imprisonment in the county jail for not less than ten (10) days nor more than one (1) year, or by both.

History: En. Sec. 17, Ch. 215, L. 1951.

Separability of Provisions

Section 18 of Ch. 215, L. 1951 read, "If any provision of this act or the application thereof to any person, corporation, association, organization, or circumstances, is for any reason held invalid, ineffective, or unconstitutional by a court of competent jurisdiction, the remainder of this act, or the application of such provision to other persons, corporations, associations, organizations, or circumstances, shall not be affected thereby, and the legislative assembly hereby declares the severability of the several sections and provisions of this act, and that it would have enacted the same without the invalid provisions or the invalid applications, as the case may be, had such invalidity been apparent."

CHAPTER 47—PUNISHMENTS—ATTEMPTS AND OTHER GENERAL PROVISIONS

Section 94-4716.1. Commencement of term for offense committed by prisoner under sentence.
94-4720. Civil rights of convict suspended.

94-4701. (11581) Acts made punishable by different provisions, etc.

Proof of Previous Conviction

A prior foreign conviction must be charged and proved before the court is bound to fix a minimum penalty based thereon. State v. Brown, 136 M 382, 351 P 2d 219, 222.

94-4708. (11588) Removal from office for neglect of official duty.

Operation and Effect

This section does not restrain or limit the power of the governor to remove the third member of the unemployment compensation commission. State ex rel. Bonner v. District Court, 122 M 464, 206 P 2d 166, 171.

94-4710. (11590) Attempts to commit crime, when punishable.

References

Cited or applied in State v. Quinlan, 126 M 52, 244 P 2d 1058, 1061 (dissenting opinion); State v. Shambo, 133 M 305, 322 P 2d 657, 658.

94-4711. (11591) Attempts to commit crime, how punishable.

References

Cited or applied in State v. Dietz, 135 M 496, 343 P 2d 539, 540; Petition of Erickson, 146 M 456, 409 P 2d 447.

94-4713. (11593) Second offense, how punished after conviction, etc.

Cross-References

Charging an offense, prior conviction, sec. 95-1506.

Charge of Previous Conviction

Charging the defendant with a prior conviction of a felony did not deprive him of a fair trial. Petition of Noller, 143 M 301, 387 P 2d 301.

Identity of Person under Prior Conviction

Before a person can be convicted of the former convictions there must be proof aside from the judgment of prior convictions that the person convicted was in fact the defendant. State v. Nelson, 130 M 466, 304 P 2d 1110, 1115.

Lewd and Lascivious Act upon a Child

Defendant convicted of a lewd and lascivious act upon a child under section 94-4106, which carried a penalty of imprisonment not exceeding 25 years, was properly sentenced to a term of not less than 10 years on a subsequent offense, pursuant to subd. 1 of this section, where the jury found that he had previously been convicted of lewd and lascivious acts upon a child. In re Davis' Petition, 139 M 622, 365 P 2d 948, 949.

Pleading of Prior Conviction

When a prior conviction is set forth in the information it does not constitute a second prosecution for a public offense for which defendant has once been prosecuted. In re Bean's Petition, 139 M 625, 365 P 2d 936, 937.

Proof of Nature of Crime

When a judgment of prior conviction is offered as evidence the state must prove that the crime involved was a felony within the meaning of this section. State v. Nelson, 130 M 466, 304 P 2d 1110, 1115.

Proof of Previous Conviction

A prior foreign conviction must be charged and proved before the court is bound to fix a minimum penalty based thereon. State v. Brown, 136 M 382, 351 P 2d 219, 222.

It was not a denial of fair trial to allow the jury to consider the proven and admitted fact that the defendant in a first degree assault case had been convicted of three prior felonies, where only one would have served to increase the punishment under this section, when jury was instructed that the prior convictions were to be considered only in fixing the punishment, if and when the defendant was found guilty of the assault charge. Petition of Jones, 144 M 13, 393 P 2d 780.

Where record indicated that petitioner for writ of habeas corpus had sustained a prior felony conviction and that under this section he might have received the same sentence for second degree burglary with a prior offense as he did receive for first degree burglary, it did not show that petitioner was not prejudiced by not being fully informed as to the difference between first and second degree burglary, as a prior conviction was not charged or established. Jones v. State, 235 F Supp 673, 678.

References

Cited or applied in State v. Dietz, 135 M 496, 343 P 2d 539, 540; State ex rel. Nelson v. Ellsworth, 141 M 78, 375 P 2d 316, 318; Petition of Jones, 142 M 622, 387 P 2d 300; State v. Knight, 143 M 27, 387 P 2d 22; State v. Pelke, 143 M 262, 389 P 2d 164; State v. Schleining, 146 M 1, 403 P 2d 625; Petition of Jones, 146 M 305, 405 P 2d 978; Petition of Spangler, 146 M 344, 406 P 2d 686; Petition of Erickson, 146 M 456, 409 P 2d 447.

94-4715. (11595) Foreign conviction for former offense.

Identity of Person under Prior Conviction

Before a person can be convicted of the former convictions there must be proof aside from the judgment of prior convictions that the person convicted was in fact the defendant. State v. Nelson, 130 M 466, 304 P 2d 1110, 1115.

Proof of Conviction

A prior foreign conviction must be charged and proved before the court is bound to fix a minimum penalty based thereon. State v. Brown, 136 M 382, 351 P 2d 219, 222.

Proof of Nature of Crime

When a judgment of prior conviction is offered as evidence the state must prove that the crime involved was a felony within the meaning of this section. State v. Nelson, 130 M 466, 304 P 2d 1110, 1115.

94-4716. (11596) Repealed.

Repeal

This section (Sec. 1235, Pen. C. 1895), relating to the commencement of subsequent terms of imprisonment upon conviction of two or more crimes, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-2206 and 95-2213.

94-4716.1. Commencement of term for offense committed by prisoner under sentence. The term of imprisonment fixed by judgment in a criminal action for a felony perpetrated by a person who was then under sentence of commitment to the state prison and while confined at such prison or while being conveyed to or from said prison or while awaiting conveyance or transfer to said prison or while unlawfully absent from said prison, shall commence at the termination of the term of imprisonment for which said person was then committed or under sentence at the time said subsequent offense was committed.

History: En. Sec. 1, Ch. 130, L. 1961.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-2206 and 95-2213.

Title of Act

An act providing for the time of commencement of term of imprisonment in the state prison fixed by judgment rendered when person then under sentence of commitment to the state prison; and to provide for an effective date.

Effective Date

Section 2 of Ch. 130, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 2, 1961.

Sequence of Consecutive Sentences

Where petitioner was sentenced to serve consecutive sentences for escape and using an automobile without the consent of the owner, and the warden executed the sentences in a sequence reverse to that indicated by the court, there was no infringement on his rights and his petition for writ of habeas corpus was denied. Petition of Cheadle, 143 M 327, 389 P 2d 579.

94-4717. (11597) When term of imprisonment commences, etc.

Repeal

This section (Sec. 1236, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-2206 and 95-2213.

Repeal by Implication

The enactment of chapter 21 of the Laws of 1913 repealed this section by implication as far as any application to suspended sentence is concerned. State ex rel. Wetzel v. Ellsworth, 143 M 54, 387 P 2d 442.

Second Conviction

Relator was convicted of the crime of burglary in the first degree. After serving one year and six days he was released from prison pending appeal. The conviction was reversed upon such appeal and a new trial ordered. Upon the new trial he was again convicted and sentenced for the same period as the first, ten years. During his second incarceration he was not entitled to credit against the second sentence for time served under the first sentence. State ex rel. Nelson v. Ellsworth, 141 M 78, 375 P 2d 316, 318.

94-4720. (11600) **Civil rights of convict suspended.** A sentence of imprisonment in the state prison for any term less than life suspends all the civil rights of the person so sentenced, and forfeits all public offices and private trusts, authority, or power, during such imprisonment. The governor has power to restore to citizenship any person convicted of any offense committed against the laws of the state, upon cause being shown, either after the expiration of sentence, or after pardon. The governor may request an investigation by the board of pardons to determine if such restoration to citizenship be advisable.

History: En. Sec. 154, p. 217, Bannack Stat.; re-en. Sec. 186, p. 313, Cod. Stat. 1871; re-en. Sec. 213, 4th Div. Rev. Stat. 1879; re-en. Sec. 279, 4th Div. Comp. Stat. 1887; amd. Sec. 1239, Pen. C. 1895; re-en. Sec. 8904, Rev. C. 1907; re-en. Sec. 11600, R. C. M. 1921; amd. Sec. 1, Ch. 87, L. 1955. Cal. Pen. C. Sec. 673.

Amendment

The 1955 amendment added the second and third sentences.

Effective Date

Section 2 of Ch. 87, Laws 1955 provided the act should be in effect from and after April 1, 1955.

94-4723. (11603) **Convict competent witness.**

Proper Method to Impeach

Where a defendant upon cross-examination admits his prior convictions of felonies it is error for the court to then allow the state to introduce into evidence the judgment record of prior convictions, for it serves no useful purpose since the credibility has already been impeached and it may weigh too heavily against the defendant. State v. Coloff, 125 M 31, 231 P 2d 343, 344.

Testimony of Accomplice

An accomplice may testify in a criminal case even though he is a convicted felon at the time of his testimony. State v. Barick, 143 M 273, 389 P 2d 170.

CHAPTER 48—RIGHTS OF DEFENDANT

94-4801. (11606) **No person punishable but on legal conviction.**

Collateral References

Duty to advise accused as to right to assistance of counsel. 3 ALR 2d 1003.

94-4803. (11608) **Repealed.**

Repeal

This section (Sec. 1, p. 189, Cod. Stat. 1871), relating to the definition of a criminal action, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968.

94-4804. (11609) **Parties to a criminal action.**

Operation and Effect

In a criminal case the state is the opposite party to the defendant, and former section 93-1901-9, relating to calling the opposite party, is not applicable to a criminal proceeding. State v. Moorman, 133 M 148, 321 P 2d 236, 238.

References

Cited or applied in State v. MacLean, 129 M 500, 291 P 2d 250, 252.

94-4805. (11610) **Repealed.**

Repeal

This section (Sec. 1354, Pen. C. 1895), relating to the definition of defendant as the party prosecuted in a criminal action, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968.

94-4806. (11611) **Rights of defendant in a criminal action.**

Discharge of Court-appointed Counsel

Where court-appointed counsel failed to advise the clerk's office as to what would be required for the record on appeal, as required by section 94-8112, from conviction of burglary and there was no record

before the supreme court, defendant had been denied his right to effective representation by counsel on his appeal and the cause was remanded to the district court for revocation of appointment of present counsel and appointment of competent and effective counsel to properly prosecute the appeal. State v. Bubnash, 139 M 517, 366 P 2d 155, 158.

Where defendant charged with burglary was granted the services of court-appointed counsel he did not have the right to discharge such counsel unless he was able to provide counsel at his own expense or desired to undertake his own defense. However, upon a proper showing, such counsel could be discharged by the trial court. Peters v. State, 139 M 634, 366 P 2d 158, 159.

Examination of Witnesses in Open Court

Where defendant pleaded guilty to grand larceny, the extent of his punishment should have been determined under section 94-2706 by the exercise of a sound discretion on the part of the trial judge after the circumstances had been "presented by the testimony of witnesses examined in open court" specifically provided for in sections 94-7813 and 94-7814 subject to the provisions of section 94-7831. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 362.

Impartial Jury

Trial court was in error for refusing to grant the defendant a change of venue where evidence disclosed that local newspaper had fanned the feeling of the community against the defendant, that the local people believed the defendant to be guilty, and that the county officials themselves felt that the feeling against the defendant was so high that they moved him for safety to the state prison. State v. Dryman, 127 M 579, 269 P 2d 796, 800. (Dissenting opinion, 127 M 579, 269 P 2d 796, 801.)

Right to Appear and Defend by Counsel

By section 94-6512 a defendant is guaranteed counsel by appointment of the court, if he cannot himself employ an attorney. It is equally the duty of the court to make the appointment of counsel effective, i. e., to give court-appointed counsel a reasonable time for the preparation of his case after he has been appointed. State v. Blakeslee, 131 M 47, 306 P 2d 1103, 1107. (Dissenting opinion, 131 M 47, 306 P 2d 1103, 1107.)

Where counsel was appointed by the court, after withdrawal of defendant's original counsel, but trial was commenced three days after such appointment, such appointment was made purposeless as it is the duty of the court to make the appointment effective by giving a reasonable time for the preparation of the case. State v. Blakeslee, 131 M 47, 306 P 2d 1103, 1107. (Dissenting opinion, 131 M 47, 306 P 2d 1103, 1107.)

94-4807. (11612) Second prosecution for the same offense, etc.

Pleading of Prior Conviction

When a prior conviction is set forth in the information it does not constitute a second prosecution for a public offense for which defendant has once been prosecuted. In re Bean's Petition, 139 M 625, 365 P 2d 936, 937.

CHAPTER 49—DEFINITIONS—PROSECUTION OF CRIMINAL ACTIONS —JURISDICTION OF COURTS

94-4901 to 94-4904. (11615 to 11618) Repealed.

Repeal

These sections (Secs. 1370 to 1373, Pen. C. 1895), relating to definitions of complaint, indictment, information, and magistrate, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-203 and 95-208.

94-4905. (11619) Who are magistrates.

Repeal

This section (Sec. 1374, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-208.

References

Cited in State ex rel. Harrison v. District Court, 135 M 365, 340 P 544, 547.

94-4906 to 94-4909. (11620 to 11623) Repealed.

Repeal

These sections (Sec. 1, p. 248, L. 1891; Secs. 1375, 1380 to 1382, Pen. C. 1895), relating to the definition of peace officer, prosecution of actions in justice court, and prosecution of actions in district court,

were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-210, 95-1301, 95-1501, 95-1502, and 95-2001.

94-4910. (11624) Leave to file information.

Repeal

This section (Sec. 1383, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1301.

Sufficiency of Facts in Information

Where the motion for leave to file the information disclosed that decedent was shot at close range with a high powered rifle and killed on defendant's farm, that the coroner's jury verdict was that the killing was intentional, that evidence of the commission of the crime and guilt of the defendant was introduced at a habeas corpus hearing, that the county attorney had made a complete investigation, and that as a result he believed the defendant was guilty, the motion was sufficient to grant leave to file information. State v. London, 131 M 410, 310 P 2d 571, 581.

94-4911. (11625) Order of court granting.

Repeal

This section (Sec. 1384, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1301 and 95-1501.

Discretion of Court

Under this section the court may grant leave or require examination, and the latter presupposes the right to grant or deny the application on examination; but the statute does not provide for findings of fact and conclusions of law. The section contemplates a requirement of sufficient evidence to move the court's discretion, but does not contemplate an unlimited discretion with finality of decision that discharges or excuses a defendant from any further proceedings. State ex rel. Harrison v. District Court, 135 M 365, 340 P 2d 544.

Examination before Leave to File

Where a district judge assumed to act upon an application for leave to file an information, he should have directed an examination before himself as magistrate or some other magistrate. State ex rel. Harrison v. District Court, 135 M 365, 340 P 2d 544.

94-4912 to 94-4915. (11626 to 11629) Repealed.

Repeal

These sections (Secs. 1385 to 1388, Pen. C. 1895), relating to filing of information by county attorney, entering order granting leave to file information in minutes of court, prohibition against disclosure that leave granted or information filed, and when prosecutions by indictment required, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-902, 95-1301, 95-1302 and 95-1501.

94-4916. (11630) Jurisdiction of justices of the peace.

Repeal

This section (Sec. 1400, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-302.

Compiler's Note

The reference to section 94-1307 in this section should read section 94-603.

References

Cited in State v. Holt, 121 M 459, 194 P 2d 651, 662; State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 856.

94-4917. (11631) Repealed.

Repeal

This section (Sec. 1401, Pen. C. 1895), relating to jurisdiction of the district court, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-301.

CHAPTER 53—SUPPRESSION OF RIOTS

94-5304. (11658) Magistrates and officers to command rioters to disperse.

Liability of Sheriff

This section is merely declaratory of the common law and the sheriff is not liable in damages for damage caused by mob violence. Annala v. McLeod, 122 M 498, 206 P 2d 811, 815.

94-5305. (11659) To arrest rioters if they do not disperse.

Liability of Sheriff

This section is merely declaratory of the common law and the sheriff is not liable in damages for damage caused by mob violence. Annala v. McLeod, 122 M 498, 206 P 2d 811, 815.

94-5314. Liability of officers for neglect of duties, etc.

Liability of Sheriff

There was no provision imposing liability for damages upon the sheriff prior to the enactment of this law. Annala v. McLeod, 122 M 498, 206 P 2d 811, 815.

CHAPTER 55—REMOVAL OF OFFICERS OTHERWISE THAN BY IMPEACHMENT

94-5501. (11687) Officers subject to removal.

Operation and Effect

These sections do not restrain or limit the governor's power of removal of the third member on the unemployment compensation commission. State ex rel. Bonner v. District Court, 122 M 464, 206 P 2d 166, 171.

Removal of Clerk of School District

A clerk of a school district board of trustees may be removed without notice and hearing since he is not a public officer. State ex rel. Running v. Jacobson, 140 M 221, 370 P 2d 483, 486.

94-5516. (11702) Removal of public officers by summary proceedings.

Operation and Effect

Under this section of the Code it is the public policy of the state, in cases where a county officer is charged with collecting illegal fees, that such officer be entitled, as a matter of defense, to offer evidence of his good faith or honest mistake and the value received by the county. State v. Hale, 126 M 326, 249 P 2d 495, 496.

Time for Appearance of Party

In computing time for citing by court of party to appear the first day should be excluded and the last day included. State ex rel. Burns v. Lacklen, 129 M 243, 284 P 2d 998, 1005, overruling State ex rel. Sullivan v. District Court, 122 M 1, 196 P 2d 452, 455.

References

Cited or applied in State ex rel. Olsen v. Public Service Comm., 131 M 104, 308 P 2d 633, 639.

CHAPTER 56—LOCAL JURISDICTION OF PUBLIC OFFENSES

94-5601. (11703) Jurisdiction of offenses committed in this state.

Repeal

This section (Sec. 1560, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-304.

Forgery

State court had jurisdiction of prosecution for forgery of check under section 94-2007 allegedly committed by enrolled member of Indian tribe, although check was obtained from Indian agency office, where check was cashed in a town outside of the boundaries of the Indian reservation. Petition of Fox, 141 M 189, 376 P 2d 726, 727.

Indian Wards

The state of Montana has jurisdiction over Indian wards for crimes committed by them within the state but without the bounds of "Indian country." Buckman v. State, 139 M 630, 366 P 2d 346; In re Diserly's Petition, 140 M 219, 370 P 2d 763.

Tribal Indians

Crimes committed by Indians within Montana, but without the bounds of "Indian Country" are within the jurisdiction of the state courts. Petition of Fox, 141 M 189, 376 P 2d 726, 727.

94-5602. (11704) Offenses commenced without, but consummated, etc.

Repeal

This section (Sec. 1561, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-304 and 95-407.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 412 (dissenting opinion).

94-5603, 94-5604. (11705, 11706) Repealed.

Repeal

These sections (Secs. 1562, 1563, Pen. C. 1895), relating to jurisdiction of dueling offenses, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law see Title 95, ch. 4.

94-5605. (11707) Offense committed partly in one county and partly, etc.

Repeal

This section (Sec. 14, p. 220, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-402.

References

Cited or applied in State v. Rother, 130 M 357, 303 P 2d 393 at 407 (dissenting opinion).

94-5606 to 94-5619. (11708 to 11721) Repealed.

Repeal

These sections (Secs. 16, 17, p. 221, Bannack Stat.; Sec. 31, p. 275, Cod. Stat. 1871; Secs. 1565 to 1578, Pen. C. 1895), relating to jurisdiction of various offenses, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-403 to 95-406 and 95-408 to 95-412.

CHAPTER 57—TIME OF COMMENCING CRIMINAL ACTIONS

94-5703. (11724) Limitation of one year in misdemeanors.

References

Cited in State v. Saginaw, 124 M 225, 220 P 2d 1021, 1025.

CHAPTER 58—THE COMPLAINT

(Repealed—Section 2, Chapter 196, Laws of 1967)

94-5801 to 94-5805. (11728 to 11732) Repealed.

Repeal

These sections (Secs. 75 to 77, 79, pp. 202, 203, Cod. Stat. 1871; Sec. 1, p. 40, L. 1885; Secs. 1590 to 1594, Pen. C. 1895), relating to the complaint, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-603 and 95-901.

CHAPTER 59—WARRANT OF ARREST—PROCEEDINGS ON EXECUTION THEREOF

94-5901 to 94-5903. (11733 to 11735) Repealed.

Repeal

These sections (Secs. 1600 to 1602, Pen. C. 1895), relating to form of warrant of arrest, contents of warrant, and execution of warrant, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-601 and 95-603.

94-5904. (11736) To what peace officers warrants are to be directed.

Repeal

This section (Sec. 1603, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-603.

Operation and Effect

The sheriff of Flathead County has authority to arrest person in Powell County under warrant issued in Flathead County upon such person's release from prison. Application of Campeau, 122 M 375, 209 P 2d 1012, 1013.

References

Cited or applied in State v MacLean, 129 M 500, 291 P 2d 250, 252.

94-5905. (11737) To what peace officers warrants are to be directed, etc.

Repeal

This section (Sec. 1604, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-603.

References

Cited or applied in In re Malone, 130 M 622, 299 P 2d 455.

94-5906 to 94-5911. (11738 to 11743) Repealed.

Repeal

These sections (Sec. 78, p. 202, Cod. Stat. 1871; Secs. 1605 to 1610, Pen. C. 1895), relating to arrest in any county, taking defendant before magistrate, and bail were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-609, 95-902 and 95-1105.

94-5912. (11744) No delay in taking defendant before magistrate.

Repeal

This section (Sec. 1611, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-901.

Availability of Magistrate

In an action for false imprisonment brought by the plaintiff against a sheriff and surety on his official bond based on unnecessary delay in taking plaintiff before a magistrate, it was necessary for the plaintiff to prove that a magistrate was available on the particular day when the false imprisonment allegedly occurred. Rounds v. Bucher, 137 M 39, 349 P 2d 1026.

Unlawful Detention

Defendant convicted of the crime of uttering and delivering a fictitious check was not entitled to a reversal of his conviction because he was detained for a period of 21 days without being taken before a magistrate where there was no confession and the detention did not prejudice him in presenting his defense on the merits at the trial. State v. Johnston, 140 M 111, 367 P 2d 891, 892.

94-5913 to 94-5918. (11745 to 11750) Repealed.

Repeal

These sections (Secs. 1612 to 1617, Pen. C. 1895), relating to proceedings where defendant taken before magistrate other than one who issued warrant, proceedings for offenses triable in another county, and conveyance of prisoner by officer, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-609, 95-616, 95-901 and 95-1102.

CHAPTER 60—ARRESTS—BY WHOM AND HOW MADE—CLOSE PURSUIT—RETAKING AFTER ESCAPE

Section 94-6029. Definition.
94-6030. Authority to establish roadblocks.
94-6031. Minimum requirements.
94-6032. Existing law preserved.
94-6033. Penalty.

94-6001. (11751) Arrest defined—by whom made.

Repeal

This section (Secs. 63, 64, p. 201, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see Title 95, ch. 6.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 216.

94-6002. (11752) How an arrest is made and what restraint, etc.

Repeal

This section (Sec. 111, p. 234, Bannack Stat.), relating to how arrest made and restraint allowed, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-602.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 216.

94-6003. (11753) Arrests by peace officers.

Repeal

This section (Sec. 66, p. 201, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-608.

Jurisdiction of Police Court

City police court had jurisdiction of defendant, arrested by a city police officer without a warrant, while driving on city streets, and promptly taken to the city police court where the arresting officer reported and charged defendant with operating a motor vehicle within the corporate limits of the city while under the influence of intoxicating liquor, in violation of city ordinance. City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 215.

Subsequent to Confession

Where defendant was requested to go to the sheriff's office for questioning and was not arrested until after his confession was given, the arrest without a warrant subsequent to the confession was a proper one within this section. State v. Nelson, 139 M 180, 362 P 2d 224, 229.

Unlawful Arrest

In action for damages for unlawful arrest which occurred after store manager handed plaintiff's check to officer and plaintiff seized check from officer's hand, arrest could not be justified by alleging a violation of sections 94-35-169 and 94-4202. Harrer v. Montgomery Ward & Co, 124 M 295, 221 P 2d 428, 435.

References

Cited or applied in State v. Storm, 124 M 102, 220 P 2d 674, 677; State v. MacLean, 129 M 500, 291 P 2d 250, 252; United States v. Clark, 247 F Supp 958.

94-6004. (11754) Repealed.

Repeal

This section (Sec. 67, p. 201, Cod. Stat. 1871), relating to arrests by private persons, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-611.

94-6005. (11755) Magistrate may order arrest.

Repeal

This section (Sec. 70, p. 202, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-617.

References

Cited or applied in State v. MacLean, 129 M 500, 291 P 2d 250, 252.

94-6006. (11756) Person making arrest may summon assistance.

Repeal

This section (Sec. 1635, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-609.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 216.

94-6007, 94-6008. (11757, 11758) Repealed.

Repeal

These sections (Sec. 68, p. 201, Cod. Stat. 1871; Secs. 1636, 1637, Pen. C. 1895), relating to when and how arrest made, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-604, 95-606, and 95-607.

94-6009. (11759) Warrant must be shown, when.

Repeal

This section (Sec. 1638, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-604.

References

Cited in Application of Campeau, 122 M 375, 209 P 2d 1012, 1013.

94-6010 to 94-6015. (11760 to 11765) Repealed.

Repeal

These sections (Sec. 294, p. 261, Bannack Stat.; Secs. 69, 72, 74, 450, pp. 202, 258, Cod. Stat. 1871; Secs. 1639 to 1644, Pen. C. 1895), relating to force used in arrests, breaking doors and windows, tak-

ing weapons from arrested persons, duty of private person and officer arresting without warrant, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-602, 95-701, 95-702 and 95-901.

94-6016. (11766) Person arrested without a warrant to be taken before, etc.

Repeal

This section (Sec. 1645, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-610 and 95-901.

Arrest Subsequent to Confession

Where defendant was requested to go to the sheriff's office for questioning and was not arrested until after his confession was given, the arrest without a warrant subsequent to the confession was proper under section 94-6003. State v. Nelson, 139 M 180, 362 P 2d 224, 229.

Jurisdiction of Police Court

City police court had jurisdiction of defendant, arrested by a city police officer without a warrant, while driving on city streets, and promptly taken to the city police court where the arresting officer reported and charged defendant with operating a motor vehicle within the corporate limits of the city while under the influence of intoxicating liquor, in violation of city ordinance. City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 215.

Purpose

The purpose of this statute is to insure that the person arrested is advised of the charge made against him in order to enable him to prepare a defense, and to protect him from being held incommunicado for protracted periods of time. State v. Nelson, 139 M 180, 362 P 2d 224, 229.

Unlawful Detention

Defendant convicted of the crime of uttering and delivering a fictitious check was not entitled to a reversal of his conviction because he was detained for a period of 21 days without being taken before a magistrate where there was no confession and the detention did not prejudice him in presenting his defense on the merits at the trial. State v. Johnston, 140 M 111, 367 P 2d 891, 892.

What Does Not Constitute Unnecessary Delay

Defendant's confession was not rendered inadmissible by reason of delay in taking him before a magistrate where he was requested at 8:55 p. m., Friday, November 7, 1958, to come voluntarily to jail for questioning; shortly after questioning by sheriff at about 10:00 p. m. he made an oral statement and at 11:50 p. m. wrote and signed a confession, witnessed by sheriff and one of his deputies; he was booked at 12:07 a. m., Saturday, November 8; at 10:40 a. m. on Saturday a statement was taken from defendant in the county attorney's office in the presence of the sheriff and deputy county attorney; and at 11:45 a. m., Saturday, November 8, defendant was brought before the magistrate in the courthouse. State v. Nelson, 139 M 180, 362 P 2d 224, 229, 230.

References

Cited or applied in State v. MacLean, 129 M 500, 291 P 2d 250, 252.

94-6017. (11767) Arrest by telegraph.

Repeal

This section (Sec. 1646, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-603 and 95-608.

References

Cited in Application of Campeau, 122 M 375, 209 P 2d 1012, 1013.

94-6018 to 94-6028. (11768 to 11772) Repealed.

Repeal

These sections (Sec. 74, p. 202, Cod. Stat. 1871; Secs. 1647 to 1649, 1660, 1661, Pen. C. 1895; Secs. 1 to 5, 7, Ch. 187, L. 1937), relating to arrest by telegraph, examination of defendant, trial and judgment of misdemeanor, taking person who escapes or is rescued and Uniform Act on Close Pursuit, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-603, 95-607, 95-608, 95-619, 95-901 and Title 95, ch. 20.

94-6029. Definition. For the purpose of this act, a "temporary roadblock" means any structure, device, or means used by the duly elected or appointed law-enforcement officers of this state, and their deputies, for the

purpose of controlling all traffic through a point on the highway whereby all vehicles may be slowed or stopped.

History: En. Sec. 1, Ch. 60, L. 1959.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-618.

Title of Act

An act authorizing the establishment of temporary roadblocks on the highways of the state of Montana to identify drivers and apprehend law violators; by defining a temporary roadblock and the purpose for which it may be used; by providing minimum requirements in establishing temporary roadblocks and other matters properly relating thereto; by fixing penalty for violation of act; by repealing all acts or parts of acts in conflict herewith.

94-6030. Authority to establish roadblocks. The duly elected or appointed law-enforcement officers of this state, and their deputies, are hereby authorized to establish, in their respective jurisdictions, or in other jurisdictions within the state, temporary roadblocks on the highways of this state for the purpose of identifying drivers, and apprehending persons wanted for violation of the laws of this state, or of any other state, or of the United States, who are using the highways of this state.

History: En. Sec. 2, Ch. 60, L. 1959.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-618.

94-6031. Minimum requirements. For the purpose of warning and protecting the traveling public, the minimum requirements to be met by such officers establishing temporary roadblocks, if time and circumstances allow, are:

1. The temporary roadblock must be established at a point on the highway clearly visible at a distance of not less than one hundred (100) yards, in either direction.

2. At the point of the temporary roadblock, a sign shall be placed on the center line of the highway displaying the word "stop" in letters of sufficient size and luminosity to be readable at a distance of not less than fifty (50) yards, in both directions, either in daytime or darkness.

3. At the same point of the temporary roadblock, at least one red light, which shall be a flashing or intermittent beam of light, must be placed at the side of the roadway clearly visible to the oncoming traffic, at a distance of not less than one hundred (100) yards.

4. At a distance of not less than two hundred (200) yards from the point of the temporary roadblock, warning signs must be placed at the side of the highway, containing any wording of sufficient size and luminosity, to warn the oncoming traffic that a "police stop" lies ahead. A burning beam light, flare, or a lantern must be placed near such signs for the purpose of attracting the attention of approaching drivers during hours of darkness. A red flag may be used for the same purpose during daylight hours.

History: En. Sec. 3, Ch. 60, L. 1959.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-618.

94-6032. Existing law preserved. Nothing in this act shall be deemed to limit, or encroach upon the existing authority of Montana law-enforcement officers in the performance of their duties involving traffic control.

History: En. Sec. 4, Ch. 60, L. 1959.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-618.

94-6033. Penalty. Any person who shall proceed or travel through a roadblock without subjecting himself to the traffic control so established shall be guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or by both fine and imprisonment.

History: En. Sec. 5, Ch. 60, L. 1959.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-618.

Repealing Clause

Section 6 of Ch. 60, Laws 1959 repealed all acts or parts of acts in conflict therewith.

CHAPTER 61—EXAMINATION AND COMMITMENT OR DISCHARGE OF DEFENDANT

94-6101. (11773) Magistrate to inform the defendant of the charge, etc.

Repeal

This section (Sec. 90, p. 204, Cod. Stat. 1871), is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1001.

Collateral References

Duty to advise accused as to right to assistance of counsel. 3 ALR 2d 1003.

94-6102 to 94-6115. (11774 to 11787) Repealed.

Repeal

These sections (Secs. 33, 40, pp. 223, 224, Bannack Stat.; Secs. 86, 114 to 116, pp. 204, 207, 208, Cod. Stat. 1871; Secs. 1671 to 1684, Pen. C. 1895; Sec. 1, Ch. 8, L. 1919), relating to time to send and sending for counsel, examination, form of commitment for examination, subpoenas and examination of witnesses, and discharge or commitment of defendant, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1102, 95-1202 to 95-1204, 95-1708 and 95-1801.

94-6116. (11788) Order for bail on commitment.

Repeal

This section (Sec. 1685, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1123 and 95-1204.

Collateral References

Discharge, suspension, or remission of bail by reason of imprisonment of principal for a different offense. 4 ALR 2d 440.

94-6117 to 94-6125. (11789 to 11797) Repealed.

Repeal

These sections (Secs. 43 to 46, p. 225, Bannack Stat.; Secs. 99 to 102, 110, 111, pp. 205 to 207, Cod. Stat. 1871; Secs. 1686 to 1694, Pen. C. 1895), relating to commitment of defendant on order of magistrate, security for appearance of witnesses, duty of magistrate to return testimony, etc., to the court, and waiver of examination, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1202, 95-1204 and 95-1801.

CHAPTER 62—PRELIMINARY PROVISIONS—FILING THE INFORMATION

94-6201. (11798) Offenses, how prosecuted.

Repeal

This section (Sec. 1720, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1502.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 860.

94-6202 to 94-6205. (11799 to 11802) Repealed.

Repeal

This section (Sec. 2, p. 249, L. 1891; Secs. 1721, 1722, 1730, 1731, Pen. C. 1895), relating to accusations or informations against district, county, municipal and township officers, filing information, and duty of county attorney to file information, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1302 and 95-1303.

94-6206. (11803) Duty of court when county attorney does not file, etc.

Repeal

This section (Sec. 2, p. 249, L. 1891) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1303.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 860.

94-6207. (11804) Information may be amended.

Repeal

This section (Sec. 1733, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1505.

Operation and Effect

Where court allowed state to amend information charging defendant with incest by changing "fornication" to "adultery" there was no substantial change in the charge and only touched a matter of form. Whether the defendant was married or unmarried at the time is not a material ingredient of the offense. In either event the defendant is guilty, if the intercourse charged is proved. State v. Kuntz, 130 M 126, 295 P 2d 707, 710.

Prior Conviction Charged

Where the state on the day of trial filed an amended information changing the charge from robbery to robbery and a prior conviction of forgery, and the defendant was given no opportunity to either admit or deny the previous conviction, such amendment was substantive, increased the minimum penalty, and was reversible error. State v. Knight, 143 M 27, 387 P 2d 22.

Sufficiency of Information

The fact that an amendment was in fact made does not affect the sufficiency of the information, if the same was sufficient before the addition was made. State v. Davis, 141 M 197, 376 P 2d 727, 729.

Waiver of Objection

Where, after plea of not guilty, county attorney asked permission to amend information and counsel for defendant stated there was no objection, any objection to the amendment of the information to include a prior conviction was waived. State ex rel. Treat v. District Court, 122 M 249, 200 P 2d 248.

94-6208. (11805) Indorsement on information.

Repeal

This section (Sec. 1734, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1503.

Application

The reason for the statutory requirement that the names of witnesses be indorsed on the information is to safeguard defendant against surprise and unfair advantage. There was no unfair advantage taken of defendant when the county attorney indorsed the name of a witness after impaneling a jury because he did not know of the existence of the witness at the time when the information was filed and gave notice to the defendant's attorney at that time and offered to agree to a reasonable delay in the trial in order that the defendant could examine the witness and secure evidence to meet his testimony. State v. Phillips, 127 M 381, 264 P 2d 1009, 1015.

CHAPTER 63—THE GRAND JURY—ITS FORMATION—POWERS AND DUTIES—FINDING AND PRESENTING AN INDICTMENT

94-6301 to 94-6313. (11806 to 11818) Repealed.

Repeal

These sections (Secs. 53, 54, p. 227, Bannack Stat.; Secs. 117 to 120, 123 to 127, pp. 209, 210, Cod. Stat. 1871; Secs.

1750 to 1762, Pen. C. 1895), relating to the grand jury, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1401 to 95-1404.

94-6314. (11819) Retirement of the grand jury—discharge of.

Repeal

This section (Sec. 1763, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1404.

"Final Adjournment" When Court Always Open

Although district court is always open and each term continues until succeeding term, the terms as fixed by the court limit the existence of the grand jury, the beginning of each term constituting a "final adjournment" of the preceding term within the meaning of this section. State ex rel. Adami v. Lewis and Clark County, 124 M 282, 220 P 2d 1052.

94-6315 to 94-6323. (11820 to 11828) Repealed.

Repeal

These sections (Sec. 56, p. 227, Bannack Stat.; Secs. 143, 145 to 149, pp. 212, 213, Cod. Stat. 1871; Secs. 1764, 1780 to 1787, Pen. C. 1895), relating to the grand jury, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1403, 95-1405 and 95-1408.

94-6324. (11829) When and from whom they may ask advice, etc.

Repeal

This section (Secs. 134, 135, p. 211, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1406.

Special Prosecutor—Appearance Before Grand Jury

County attorney cannot delegate to unofficial counsel his right to advise the grand jury, assist them in their investigations and examine witnesses, and an order of the district judges appointing such special prosecutor when the county attorney was present and able to act could not give such authority. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051.

The appearance of "special prosecutor" before the grand jury was ground for setting aside the indictment. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, distinguished in 131 M 254, 261, 309 P 2d 316, 320.

The press of business in the office of district attorney does not justify the appointment of a "special prosecutor" to appear before the grand jury. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051, distinguished in 131 M 254, 261, 309 P 2d 316, 320.

References

Cited or applied in State v. Cockrell, 131 M 254, 309 P 2d 316, 320.

94-6325 to 94-6330. (11830 to 11835) Repealed.

Repeal

These sections (Secs. 67, 68, 71, 72, pp. 229, 230, Bannack Stat.; Secs. 1789 to 1791, 1810 to 1812, Pen. C. 1895), relating to the grand jury, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1405, 95-1409 and 95-1410.

94-6331. (11836) Names of witnesses inserted at foot of indictment.

Repeal

This section (Secs. 75, 78, p. 230, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1410.

Appeal After Conviction

If person has gone to trial under indictment with witnesses names designated as Richard Roe and John Doe and convicted, the Supreme Court would be required to sustain the conviction if possible and burden would be on defendant to show prejudice. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

Failure to Endorse Names—Effect

Where timely motion is made before trial the statute requires the indictment to be set aside when names of witnesses are not endorsed on indictment. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

If there were no witnesses it was the duty of the prosecution, on objection of defendant, to so state, either by a verified pleading or under oath. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

Fictitious Names

If there were witnesses identified as John Doe and Richard Roe it is indefensible for the prosecution to conceal their identity from accused merely because the prosecutor believes that a disclosure of their true names is not vital or necessary to prepare a defense. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

Operation and Effect

The statute requires the endorsement of names of all witnesses, not merely the names of witnesses the state believes to be important. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1041.

94-6332. (11837) Indictment, how presented and filed.

Repeal

This section (Sec. 73, p. 230, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1410.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 860.

94-6333. (11838) Indictment to be signed by prosecuting attorney, etc.

Repeal

This section (Sec. 77, p. 230, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1410.

References

Cited or applied in State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1046.

94-6334. (11839) Warrant to issue.

Repeal

This section (Sec. 158, p. 214, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1410.

References

Cited in Application of Campeau, 122 M 375, 209 P 2d 1012, 1013.

94-6335. (11840) Repealed.

Repeal

This section (Sec. 159, p. 214, Cod. Stat. 1871), relating to indorsement of bail, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1103 and 95-1104.

CHAPTER 64—RULES OF PLEADING AND FORM OF INFORMATION AND INDICTMENT

Section 94-6407.1. Pleadings charging more than one offense—consolidation or separation for trial.

94-6401. (11841) Forms and rules of pleading.

Repeal

This section (Sec. 80, p. 231, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1501.

Operation and Effect

No section of the Criminal Code can be found directing or requiring a bill of particulars to be furnished to a defendant; therefore, no bill of particulars may be required or ordered. State v. Bosch, 125 M 566, 242 P 2d 477, 487.

References

Cited or applied in State v. McLeod, 131 M 478, 311 P 2d 400, 406.

94-6402. (11842) Repealed.

Repeal

This section (Sec. 81, p. 231, Bannack Stat.), relating to definition of first pleading by state, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1502.

94-6403. (11843) Indictment or information, what to contain.

Repeal

This section (Sec. 82, p. 231, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1410, 95-1503 and 95-2001.

Assault in First Degree

Contentions of defendant that trial court erred in overruling his demurrer to the amended information and in overruling his objection to the introduction of evidence and his motion to dismiss the information, were without merit, where the amended information complied with the requirements of this section and sections 94-6401, 94-6404, 94-6405 and 94-6412. State v. McLeod, 131 M 478, 311 P 2d 400, 406.

Attempting to Influence Juror

A consolidated information which charged the defendant with attempting to influence two named jurors in a named action was sufficient to satisfy subsection 2 of this section. State v. Bogue, 142 M 459, 384 P 2d 749.

Bill of Particulars

In a criminal case no bill of particulars may be required or ordered. State v. Bosch, 125 M 566, 242 P 2d 477, 487. (This case expressly overrules any statement or holding to the contrary in State v. Gondeiro, 82 M 530, 268 P 507; State v. Shannon, 95 M 280, 26 P 2d 360; State v. Stevens, 104 M 189, 65 P 2d 612; State v. Hahn, 105 M 270, 72 P 2d 459; State v. Robinson, 109 M 322, 96 P 2d 265, and any other such statements or holdings by this court.)

Common Understanding Rule

The test of the sufficiency of an information is: would a person of common understanding know what is intended to be charged? State v. Board, 135 M 139, 337 P 2d 924.

The test of the sufficiency of an information is whether the defendant is apprised of the charges brought against him and whether he will be surprised. State v. Bogue, 142 M 459, 384 P 2d 749, overruling State v. Hale, 129 M 449, 291 P 2d 229.

Lewd and Lascivious Act on Child

An information under section 94-4106 for committing a lewd and lascivious act on a child was sufficient although it did not allege the age of the defendant. State v. Davis, 141 M 197, 376 P 2d 727, 729.

References

Cited or applied in State v. Tursich, 127 M 504, 267 P 2d 641, 643; State v. Duncan, 130 M 562, 305 P 2d 761, 763; State v. Haley, 132 M 366, 318 P 2d 1084, 1085; State v. Fairburn, 135 M 449, 340 P 2d 157, 161; State v. Randall, 137 M 534, 353 P 2d 1054, 1056; In re Davis' Petition, 141 M 565, 380 P 2d 880; State v. Boe, 143 M 141, 388 P 2d 372.

94-6404. (11844) Form of.

Repeal

This section (Sec. 1833, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1503 and 95-2001.

Sufficiency

Information which charged the defendant with manslaughter in the form established in this section and used the words "did then and there wilfully, wrongfully, unlawfully, knowingly and feloniously kill one Duane Leslie Egge, a human being of the age of five years, contrary" was sufficient. State v. Duncan, 130 M 562, 305 P 2d 761, 763.

References

Cited or applied in State v. Bosch, 125 M 566, 242 P 2d 477, 487; State v. McLeod, 131 M 478, 311 P 2d 400, 406; State v. Haley, 132 M 366, 318 P 2d 1084, 1085; State v. Fairburn, 135 M 449, 340 P 2d 157, 161; In re Davis' Petition, 141 M 565, 380 P 2d 880.

94-6405. (11845) It must be direct and certain.

Repeal

This section (Sec. 83, p. 231, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1503 and 95-2001.

Assault in First Degree

Defendant's contentions that trial court erred in overruling his demurrer to the amended information and in overruling his objection to the introduction of evidence and his motion to dismiss the information were without merit, where the amended information complied with the requirements of this section and sections 94-6401, 94-6403, 94-6404 and 94-6412. State v. McLeod, 131 M 478, 311 P 2d 400, 406.

Bill of Particulars Not Available

In a criminal case no bill of particulars may be required or ordered. State v. Bosch, 125 M 566, 242 P 2d 477, 487. (This

case expressly overrules any statement or holding to the contrary made by the court.)

References

Cited or applied in State v. Duncan, 130 M 562, 305 P 2d 761, 763; State v. Haley, 132 M 366, 318 P 2d 1084, 1085; State v. Randall, 137 M 534, 353 P 2d 1054, 1056; State v. Bogue, 142 M 459, 384 P 2d 749.

94-6406. (11846) Repealed.

Repeal

This section (Sec. 187, p. 218, Cod. Stat. 1871), relating to when defendant indicted by fictitious or erroneous name, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1503 and 95-2001.

94-6407. (11847) Repealed.

Repeal

This section (Sec. 188, p. 218, Cod. Stat. 1871), prohibiting the charging of more than one offense in the same indictment or information, was repealed by Sec. 3, Ch. 172, Laws 1961. For new law, see secs. 95-1504, 95-1505.

94-6407.1. Pleadings charging more than one offense—consolidation or separation for trial. An indictment, information, complaint or accusation may charge two or more different offenses connected together in their commission, or different statements of the same offense or two or more different offenses of the same class of crimes or offenses, under separate counts, and if two or more indictments, informations, complaints or accusations are filed in such cases in the same court, the court may order them to be consolidated. The prosecution is not required to elect between the different offenses or counts set forth in the indictment, information, complaint or accusation, but the defendant may be convicted of any number of the offenses charged, and each offense of which the defendant is convicted must be stated in the verdict or the finding of the court: provided, that the court in which the case is triable, in the interests of justice and for good cause shown, may in its discretion order that the different offenses or counts set forth in the indictment, information, complaint and accusation be tried separately or divided into two or more groups and each of said groups tried separately. An acquittal of one or more counts shall not be deemed an acquittal of any other count.

History: En. Sec. 1, Ch. 172, L. 1961.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1504.

Title of Act

An act to provide that an indictment, information, complaint or accusation may charge two or more offenses under separate counts; providing for the consolidation of two or more indictments, informations, complaints, or accusations; providing that election by prosecution is not required; providing that conviction may be had on any number of offenses charged; providing for a statement in verdict, and that the court may order trial of different offenses charged separately or in groups; providing for effect of acquittal on part of counts; amending section 94-6703, Revised Codes of Montana, 1947, relating to demurrers in criminal cases, by deleting subsection (3) thereof; and repealing section 94-6407, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith.

Former Jeopardy

Where the defendant was charged with twenty-two counts of statutory rape and convicted on nine of the counts, it was proper that each charge be set forth in a separate count in the information and there was no violation of state or federal constitutional guaranty against double jeopardy. State v. Boe, 143 M 141, 388 P 2d 372.

References

State v. Moran, 142 M 423, 384 P 2d 777.

94-6408 to 94-6411. (11848 to 11851) Repealed.

Repeal

These sections (Secs. 84, 86, 87, p. 231, Bannack Stat.; Secs. 166, 168, 169, 189, pp. 216, 218, Cod. Stat. 1871), relating to statements as to time offense committed and as to person injured or intended to be, construction of words in indictment, and use of statutory words, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1503 and 95-1505.

94-6412. (11852) Indictment or information, when sufficient.

Repeal

This section (Sec. 88, p. 231, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1503 and 95-1702.

Assault in First Degree

Trial court committed no error in overruling defendant's demurrer to amended information and in overruling his objection to the introduction of evidence and his motion to dismiss the information, where the amended information complied with the requirements of this section and sections 94-6401, 94-6403 to 94-6405. State v. McLeod, 131 M 478, 311 P 2d 400, 406.

Manslaughter

Information for manslaughter in the form prescribed in section 94-6404, which complied with the requirements of sections 94-6403, 94-6405, and met the tests provided in this section, was sufficient. State v. Haley, 132 M 366, 318 P 2d 1084, 1085.

References

Cited in State v. Tursich, 127 M 504, 267 P 2d 641, 643; State v. Duncan, 130 M 562, 305 P 2d 761, 763; State v. Fairburn, 135 M 449, 340 P 2d 157, 161; In re Davis' Petition, 141 M 565, 380 P 2d 880.

94-6413. (11853) Not insufficient for defect of form, etc.

Repeal

This section (Sec. 1842, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1505.

References

Cited or applied in State v. Fairburn, 135 M 449, 340 P 2d 157, 161; State v. Davis, 141 M 197, 376 P 2d 727, 729; In re Davis' Petition, 141 M 565, 380 P 2d 880.

94-6414. (11854) Presumptions of law, etc., need not be stated.

Cross-References

Charging an offense, form of charge, sec. 95-1503.

94-6422. (11862) Repealed.

Repeal

This section (Sec. 93, p. 232, Bannack Stat.), relating to acquittal of one or more defendants under indictment against several, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1504 and 95-1915.

94-6423. (11863) Distinction between accessory before the fact, etc.

Aiding and Abetting

While the statute defines larceny as the taking of property from the person of another yet it is sufficient to show the defendant's guilt that he aided or abetted in the commission of the crime. State v. Maciel, 130 M 569, 305 P 2d 335, 336.

Instructions

Where a verbal declaration of one codefendant that he and the other codefendant were partners was given in evidence, it was error for the court to refuse defendant's instruction that such verbal declaration is insufficient to establish a partnership. Although a partnership was immaterial because of this section and section 94-204, yet the jury may have given full consideration to the declaration and found defendant guilty on the strength thereof. State v. Keller, 126 M 142, 246 P 2d 817, 821.

Operation and Effect

Under this section and section 94-204, evidence was sufficient to sustain a conviction of assault in the second degree where defendant was at the scene of the

crime and was admittedly a participant therein; it is not necessary to show that he actually fired any one of the guns. State v. Simon, 126 M 218, 247 P 2d 481, 485.

Second Degree Assault

Under this section an information containing a single count charging the crime of second degree assault, as defined in section 94-602, was proper where only one crime was involved, namely, second degree assault, with at least two different ways of committing that crime; one by a direct assault and the other by aiding and abetting. State v. Zadick, — M —, 419 P 2d 749, 751.

94-6424. (11864) Indictment against accessory.

Cross-References

Venue, where person in one county commits or aids and abets commission of offense in another county, sec. 95-404.

94-6426, 94-6427. (11866, 11867) Repealed.

Repeal

These sections (Secs. 96, 99, pp. 232, 233, Bannack Stat.), relating to record of indictment or information and prohibition against disclosure of filing of indictment or information, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1409 and 95-1503.

94-6428. (11868) Of what offense a defendant may be convicted.

Repeal

This section (Sec. 100, p. 233, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1915.

Verdict for Lesser Offense

Where defendant was charged with murder in the second degree it was permissible for the jury to find him guilty of involuntary manslaughter. State v. Allison, 122 M 120, 199 P 2d 279, 288.

94-6429. (11869) Allegation as to partnership property.

Cross-References

Charging an offense, form of charge, sec. 95-1503.

References

Cited or applied in State v. Fairburn, 135 M 449, 340 P 2d 157, 161; In re Davis' Petition, 141 M 565, 380 P 2d 880.

94-6430 to 94-6433. (11870 to 11873) Repealed.

Repeal

These sections (Secs. 1859 to 1861, 2590, Pen. C. 1895), relating to amendment of indictment or information on trial, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1505 and 95-1506.

94-6434. (11874) When not material.

Repeal

This section (Sec. 2600, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1505.

Failure to Endorse True Names of Witnesses on Indictment

If person has gone to trial under indictment on which witnesses names were designated as Richard Roe and John Doe and convicted, the Supreme Court would be required to sustain the conviction if possible and burden would be on defendant to show prejudice. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

CHAPTER 65—ARRAIGNMENT OF DEFENDANT

Section 94-6513. Compensation of attorney for accused.

94-6501. (11875) Defendant must be arraigned in the court, etc.

Repeal

This section (Sec. 1880, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1602.

Collateral References

Admissibility of confession as affected by delay in arraignment of prisoner. 19 ALR 2d 1331.

94-6502 to 94-6511. (11876 to 11885) **Repealed.**

Repeal

These sections (Secs. 193, 199, p. 220, Cod. Stat. 1871; Secs. 1881 to 1890, Pen. C. 1895), relating to the arraignment of defendant, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-902, 95-1105, 95-1107, 95-1603 and 95-1604.

94-6512. (11886) **Right to counsel on arraignment.**

Repeal

This section (Sec. 196, p. 220, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1001.

Appointment of Counsel

Defendant convicted of forgery on plea of guilty was not entitled to a writ of habeas corpus on the ground that he was not advised by the district court of his legal rights, nor was counsel appointed for him as required by this section, where there was no showing of prejudice such as would overcome the presumption that the district court performed its judicial duty; and a period of more than two years and ten months had elapsed since the arraignment but his petition for the writ was the first time such contention had been made before the supreme court. In re Diserly's Petition, 140 M 219, 370 P 2d 763, 764.

Court Appointed Counsel

Where counsel was appointed by the court, after withdrawal of defendant's original counsel, but trial was commenced three days after such appointment, such appointment was made purposeless as it is the duty of the court to make the appointment effective by giving a reasonable time for the preparation of the case. State v. Blakeslee, 131 M 47, 306 P 2d 1103, 1107. (Dissenting opinion, 131 M 47, 306 P 2d 1103, 1107.)

Perfection of Appeal

Where district court appointed counsel for the defendant and ordered preparation of the record for an appeal to the supreme court, all at public expense, defendant having had no voice in the choice, in the interest of justice it was incumbent upon the supreme court to consider the contended errors although court-appointed counsel failed to timely file the notice of appeal. State v. Frodsham, 139 M 222, 362 P 2d 413, 418.

Right to Appoint Counsel

There is no provision in the law for appointment of counsel in the supreme court, such appointments are made by the district courts. In re Pelke's Petition, 139 M 354, 365 P 2d 932, 935; Brown v. State, 140 M 289, 371 P 2d 262, 263.

Waiver of Right to Counsel

The right to counsel may be intelligently waived by an accused, and the determination of whether the waiver was intelligently made will depend upon the particular facts and circumstances surrounding each case, including the background, experience, and conduct of the accused. Petition of Jones, 143 M 19, 386 P 2d 747.

The right to counsel as provided by this section may be knowledgeably waived by a defendant competent to do so and who has been fully informed of his right by the court. Nelson v. State, 144 M 439, 397 P 2d 700.

94-6513. (11887) **Compensation of attorney for accused.** Whenever, in a criminal action or proceeding in the district court, an attorney-at-law defends a person charged with any offense, by order of the court, on the ground that the accused is unable to procure or employ counsel, the county in which such criminal action or proceeding may have arisen is liable to pay such attorney for his services such sum as the judge certifies to be a reasonable compensation therefor.

History: En. Sec. 1, p. 12, L. 1881; re-en. Sec. 197, 3d Div. Comp. Stat. 1887; amd. Sec. 1892, Pen. C. 1895; amd. Sec. 1, Ch. 33, L. 1903; re-en. Sec. 9189, Rev. C. 1907; re-en. Sec. 11887, R. C. M. 1921; amd. Sec. 1, Ch. 38, L. 1949.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1005.

Amendment

The 1949 amendment omitted a portion of this section which placed specific limitations on the amount allowed as follows, capital cases not to exceed $100, other felonies not to exceed $50, and in other cases not to exceed $25.

Repealing Clause

Section 2 of Ch. 38, Laws 1949 repealed all acts or parts of acts in conflict therewith.

References

Cited or applied in State ex rel. Irvine v. District Court, 125 M 398, 239 P 2d 272, 281; State v. Frodsham, 139 M 222, 362 P 2d 413, 416; In re Pelke's Petition, 139 M 354, 365 P 2d 932, 935; Brown v. State, 140 M 289, 371 P 2d 262, 263.

94-6514 to 94-6516. (11888 to 11890) Repealed.

Repeal

These sections (Secs. 200 to 204, p. 221, Cod. Stat. 1871; Secs. 1893 to 1895, Pen. C. 1895), relating to the arraignment of defendant, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1606 and 95-1607.

CHAPTER 66—SETTING ASIDE THE INDICTMENT OR INFORMATION

94-6601. (11891) Indictment, when set aside on motion.

Repeal

This section (Sec. 205, p. 221, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1702.

Failure To Endorse Names on Indictment

Where timely motion is made before trial the statute requires the indictment to be set aside when names of witnesses are not endorsed on indictment. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

Indictment must be set aside where witnesses names on indictment were Richard Roe and John Doe and witnesses real names were not supplied to defendant and if there were no witnesses that fact should be shown by the prosecution either by a verified pleading or under oath. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043. (In this case it was said that if other grounds had not required setting aside of indictment, court would have been disposed to return case to trial court to permit defendant to interrogate prosecutor and grand jury foreman as to whether there were witnesses whose names were not endorsed on indictment.)

If person has gone to trial under indictment on which witnesses names were designated as Richard Roe and John Doe and convicted, the Supreme Court would be required to sustain the conviction if possible and burden would be on defendant to show prejudice. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

Grounds Exclusive

The grounds for setting aside an indictment of a grand jury as set forth in this section are exclusive. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1037.

Presence of Unauthorized Person

Where there has been a violation of subd. 3 of this section the accused need not show prejudice, but the very appearance of an unauthorized person before the grand jury is sufficient to set aside the indictments. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051, distinguished in 131 M 254, 261, 309 P 2d 316, 320.

Presence of Unauthorized Person—Special Prosecutor Before Grand Jury

The appearance of "special prosecutor" before the grand jury was ground for setting aside the indictment. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, distinguished in 131 M 254, 261, 309 P 2d 316, 320.

The press of business in the office of district attorney does not justify the appointment of a "special prosecutor" to appear before the grand jury. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051, distinguished in 131 M 254, 261, 309 P 2d 316, 320.

Presence While Indictment under Consideration

A case is "under consideration" before the grand jury within the meaning of subsection 3 of this section when witnesses are being examined. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1044, distinguished in 131 M 254, 261, 309 P 2d 316, 320.

References

Cited or applied in State ex rel. Porter v. First Judicial Dist., 123 M 447, 215 P 2d 279; State v. Bosch, 125 M 566, 242 P 2d 477, 487.

94-6602. (11892) Defendant waives objections, etc.

Repeal

This section (Sec. 207, p. 221, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1702 and 95-1704.

Amendment of Information

There was no error in permitting information to be amended to allege prior conviction when there was no objection by defendant and defendant's attorney consented to its filing. State ex rel. Treat v. District Court, 122 M 249, 200 P 2d 248.

References

Cited or applied in State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1038.

94-6603. (11893) Motion, when heard—if denied or granted, etc.

Repeal

This section (Secs. 208, 209, p. 221, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1702.

References

Cited or applied in State ex rel. Porter v. First Judicial Dist., 123 M 447, 215 P 2d 279.

94-6604. (11894) Effect of order of resubmission.

Repeal

This section (Sec. 210, p. 222, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1702.

Cross-Reference

See note to sec. 94-6605. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051.

94-6605. (11895) Order no bar to another prosecution.

Repeal

This section (Sec. 1914, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1702.

Operation and Effect

Where district court was ordered to set aside indictment on ground set forth in subd. 3 of section 94-6601, prosecution for the offenses charged was not barred but the cases were ordered resubmitted to the county attorney in accordance with section 94-6604 for the filing of such information as he believes necessary. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1051, distinguished in 131 M 254, 261, 309 P 2d 316, 320.

CHAPTER 67—DEMURRER

Section 94-6703. Grounds of demurrer.

94-6701. (11896) Pleading on part of defendant.

Repeal

This section (Sec. 1920, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1702.

Operation and Effect

This section is exclusive and there is no section of the Criminal Code directing or requiring a bill of particulars to be furnished to a defendant charged with a criminal offense. State v. Bosch, 125 M 566, 242 P 2d 477, 487.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 857, 859; State v. Duncan, 130 M 562, 305 P 2d 761, 762.

94-6702. (11897) Demurrer on plea, when put in.

Repeal

This section (Sec. 1921, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1702.

Operation and Effect

When a first conviction is set aside the defendant is not precluded upon a remand for a new trial from attacking the indictment or information. State v. Hale, 129 M 449, 291 P 2d 229, 230, overruled on another point in 142 M 459, 462, 384 P 2d 749. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

References

Cited or applied in State v. Duncan, 130 M 562, 305 P 2d 761, 762.

94-6703. (11898) **Grounds of demurrer.** The defendant may demur to the indictment or information, when it appears upon the face thereof, either—

1. If an indictment, that the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the legal jurisdiction of the county; or, if an information, that the court has no jurisdiction of the offense charged therein;

2. That it does not substantially conform to the requirement of sections 94-6403, 94-6404 and 94-6405;

3. That the facts stated do not constitute a public offense;

4. That it contains any matter, which if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

History: En. Sec. 211, p. 222, Cod. Stat. 1871; re-en. Sec. 211, 3d Div. Rev. Stat. 1879; amd. Sec. 1, p. 73, L. 1885; re-en. Sec. 212, 3d Div. Comp. Stat. 1887; amd. Sec. 1922, Pen. C. 1895; re-en. Sec. 9200, Rev. C. 1907; re-en. Sec. 11898, R. C. M. 1921; amd. Sec. 2, Ch. 172, L. 1961. Cal. Pen. C. Sec. 1004.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1702.

Amendment

The 1961 amendment deleted a subd. 3, which read, "3. That more than one offense is charged;" and renumbered the succeeding subdivisions.

Repealing Clause

Section 3 of Ch. 172, Laws 1961 read "Section 94-6407, Revised Codes of Montana, 1947, is hereby repealed and all acts and parts of acts in conflict herewith are hereby repealed."

Facts Stated Do Not Constitute a Public Offense

Information charging a violation of section 94-1805 (obtaining money under false pretenses) which only avers that the defendant made a "false" or "fraudulent" representation is not sufficient. It must expressly allege the facts which made the stated pretense false. State v. Hale, 129 M 449, 291 P 2d 229, 232, distinguished in 135 M 449, 453, 340 P 2d 157, 160, overruled on another point in 142 M 459, 462, 384 P 2d 749. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

DECISIONS UNDER FORMER LAW

Sufficiency of Information

An information which charges defendant with an infamous act against nature and then in describing the manner in which the crime was committed it alleged an assault, it is not open to the charge that it is duplicitous. Allegations with respect to the assault are merely descriptive of the means of accomplishing the infamous crime against nature which never could be perpetrated against an unwilling participant without an assault. State v. McSloy, 127 M 265, 261 P 2d 663, 664.

References

Cited or applied in State v. Bosch, 125 M 566, 242 P 2d 477, 487.

94-6704 to 94-6710. (11899 to 11905) **Repealed.**

Repeal

These sections (Secs. 212, 215, p. 222, Cod. Stat. 1871; Secs. 1923 to 1929, Pen. C. 1895), relating to demurrer, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1702.

94-6711. (11906) **Objections, forming ground of demurrer, when taken.**

Repeal

This section (Sec. 216, p. 222, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1702.

References

Cited or applied in State v. Hale, 129 M 449, 291 P 2d 229, 233; State v. MacLean, 129 M 500, 291 P 2d 250, 251.

CHAPTER 68—PLEAS

94-6801. (11907) The different kinds of pleas.

Repeal

This section (Sec. 217, p. 222, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law see secs. 95-1606 and 95-1607.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 857, 859, 861; State v. Porter, 130 M 299, 300 P 2d 952, 954.

94-6802. (11908) Plea, how put in and its form.

Repeal

This section (Sec. 218, p. 222, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1902.

Written "Special Plea in Bar" Not Authorized

Justice of the peace was acting within his jurisdiction and in accordance with the law in overruling the defendant's written special plea in bar and ordering the defendant to answer to the complaint in accordance with this section and sections 94-6801 and 94-100-4. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 857, 861.

94-6803. (11909) Plea of guilty, how put in and when withdrawn.

Repeal

This section (Sec. 1942, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1902.

Denial of Motion to Withdraw

Denial of motion to withdraw plea of guilty will not be reversed where chief contention was that he was misled by the erroneous advice of counsel as to his guilt under the law, when from the record of the trial court there was evidence which would have justified a finding of guilty, regardless of the correctness of the counsel's interpretation of the law. State v. Nance, 120 M 152, 184 P 2d 554, 561, distinguished in 121 M 459, 479, 194 P 2d 651, 662.

Discretion of Court

The granting or refusal of permission to withdraw a plea of guilty and substitute a plea of not guilty rests in the discretion of the trial court and is subject to review only where an abuse of discretion is shown. State v. Nance, 120 M 152, 184 P 2d 554, 560, distinguished in 121 M 459, 479, 194 P 2d 651, 662.

Guilty Plea Under Agreement with Prosecutor

While the supreme court will not encourage the making of bargains with persons charged of crime, where a defendant has changed his plea of not guilty to a plea of guilty on an agreement with the prosecuting attorney as to recommendation for sentences which were carried out, the supreme court, will not, after he obtained the benefits of the agreement, aid him in escaping its obligations, by ordering a withdrawal of the guilty plea. State v. Nance, 120 M 152, 184 P 2d 554, 561, distinguished in 121 M 459, 479, 194 P 2d 651, 662.

Motion to Withdraw—Time for Filing

In order to receive favorable consideration an application to withdraw a plea of guilty should be made within a reasonable time. State v. Nance, 120 M 152, 184 P 2d 554, 561, distinguished in 121 M 459, 479, 194 P 2d 651, 662.

Waiver of Jury Trial

The entering of a plea of guilty by a defendant waives his right to a jury trial. State v. Peters, 140 M 162, 369 P 2d 418, 419.

When Plea of Guilty may be Withdrawn after Judgment

Where the evidence discloses that there was a grave doubt that the defendant had the mental capacity to appreciate and understand what he was doing and the consequences thereof, when without benefit of counsel, he pleaded guilty to the charge of murder, defendant should have been allowed to withdraw his plea of guilty and enter a plea of not guilty. State v. Dryman, 125 M 500, 241 P 2d 821, distinguished in 131 M 152, 156, 308 P 2d 969, 971.

Withdrawal of Plea of Guilty after Judgment

Held, on the facts of the particular case, that where the defendant at the time of entering his plea of guilty thought that he had an understanding as to what his sentence would be; that no direct commitment was made to him by any of the officers but the officers had made statements to others who were in contact with the defendant and upon whose advice he relied, the ends of justice would be best

served by permitting the defendant to change his plea. State v. Morgan, 131 M 58, 307 P 2d 244, distinguished in 134 M 301, 304, 330 P 2d 968, 970.

District court did not abuse its discretion in entering order denying defendant's motion to withdraw plea of guilty and substitute plea of not guilty where the record disclosed that defendant entered his plea of "guilty" on December 30, 1960; sentence was pronounced on January 23, 1961; and the motion was not filed in the district court until July 24, 1961, being six months after imposition of the sentence and six months and twenty-four days after entry of the plea. State v. Peters, 140 M 162, 369 P 2d 418, 419.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 859; Petition of Amor, 143 M 315, 388 P 2d 270.

94-6804. (11910) Repealed.

Repeal

This section (Sec. 221, p. 223, Cod. Stat. 1871), relating to what plea of not guilty puts in issue, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1901.

94-6805. (11911) What may be given in evidence under plea of not guilty.

Repeal

This section (Sec. 1944, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1901.

Operation and Effect

The bar to a prosecution for misdemeanor where defendant is not brought to trial within six months after the filing of the information as provided for in section 94-9507 may properly be raised by a plea of not guilty. State v. Porter, 130 M 299, 300 P 2d 952, 954.

94-6809. (11915) Repealed.

Repeal

This section (Sec. 135, p. 237, Bannack Stat.), relating to entry of plea of not guilty if defendant refuses to answer, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1606.

CHAPTER 69—CHANGE OF PLACE OF TRIAL OR JUDGE

Section 94-6913. Disqualification of judge—affidavit—number of changes authorized—calling in of judge to preside.

94-6901. (11916) What petition to contain.

Repeal

This section (Sec. 145, p. 238, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1710.

Application

Trial court was in error for refusing to grant a change of venue where evidence disclosed that local newspapers had fanned the feeling of the community against the defendant and that county officials themselves felt that feeling against the defendant was so high that they moved him for safety to the state prison. State v. Dryman, 127 M 579, 269 P 2d 796, 800. (Dissenting opinion, 127 M 579, 269 P 2d 796, 801.)

Change of Place of Trial

Where Supreme Court ordered a new trial and that it be had in some county not adjacent to Toole county because of the prejudice of the people in Toole county, trial court erred in directing that the new trial take place in Teton county. Although Teton county is not adjoining Toole county but is separated by some twenty miles, yet the word adjacent has no arbitrary meaning or definition; the term is a relative and not an absolute one, and the exact meaning of which, in any particular case, is determinable principally by the context in which it is used. State ex rel. Dryman v. District Court, 128 M 402, 276 P 2d 969, 970.

An application for a change of place of trial is addressed to the sound discretion of the trial court and a clear abuse of discretion must be shown, or the ruling of the trial court will not be disturbed. State v. Bischert, 131 M 152, 308 P 2d 969, 971; In re Larocque's Petition, 139 M 405, 365 P 2d 950, 951.

In support of an application for change of place of trial a denial of bail could not be claimed as showing prejudice by the trial judge for such is a mere preliminary matter and has nothing to do with the trial on the merits. State v. London, 131 M 410, 310 P 2d 571, 580.

Defendant in a criminal proceeding was not entitled to a change of venue where files did not contain any application for a change of place of trial as required by this section. In re Larocque's Petition, 139 M 405, 365 P 2d 950, 951.

Opinion of Defendant

Where the affidavits of defendant's motion for a change of venue stated that "in the opinion" of the defendant he would not receive a fair trial in the county of the alleged crime and set forth reasons for that opinion but failed to show compelling evidence in support of the motion, it was not an abuse of discretion for the trial court to deny the motion. State v. Barick, 143 M 273, 389 P 2d 170.

Prejudice of Judge

Action of a judge in refusing to set bond pending appeal from a manslaughter conviction is not an act which prejudices a defendant during a trial. State v. Bischert, 131 M 152, 308 P 2d 969, 971.

94-6902 to 94-6905. (11917 to 11920) Repealed.

Repeal

These sections (Secs. 227, 228, p. 224, Cod. Stat. 1871; Secs. 1971 to 1974, Pen. C. 1895), relating to change of place of trial, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1710.

94-6906. (11921) When change of place of trial not granted.

Repeal

This section (Sec. 1978, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1710.

References

Cited or applied in State v. Searle, 125 M 467, 239 P 2d 995, 999.

94-6907, 94-6908. (11922, 11923) Repealed.

Repeal

These sections (Sec. 146, p. 239, Bannack Stat.; Secs. 1976, 1977, Pen. C. 1895), relating to change of place of trial, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1710.

94-6909. (11924) Trial.

Repeal

This section (Sec. 1978, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1710.

References

State v. Moran, 142 M 423, 384 P 2d 777.

94-6910 to 94-6912. (11925 to 11927) Repealed.

Repeal

These sections (Secs. 151 to 153, p. 240, Bannack Stat.), relating to change of place of trial, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1710.

94-6913. Disqualification of judge—affidavit—number of changes authorized—calling in of judge to preside. A district judge must not sit or act as such in any criminal action or proceeding when either party makes and files an affidavit, as hereinafter provided, that he has reason to believe, and does believe, he cannot have a fair and impartial hearing or trial before a district judge. Such affidavit may be made by any party to the criminal action, motion or proceeding, personally, or by his attorney or guardian and shall be filed with the clerk of the district court in which the same may be pending, at least fifteen days prior to the trial of said

cause, or any retrial thereof after appeal. Upon the filing of the affidavit, the judge, as to whom said disqualification is averred, shall be without authority to act further in the criminal action, motion or proceeding, but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of business, the power of transferring the criminal action or proceeding to some other court, nor to the power of calling in another district judge to sit and act in such criminal action or proceeding, providing that no judge shall so arrange the calendar as to defeat the purposes of this section. Not more than one judge can be disqualified in said criminal action or proceeding, at the instance of the prosecution and not more than one judge at the instance of the defendant or defendants.

If there be more than one judge in any judicial district in which said affidavit is made and filed, another judge residing in the judicial district wherein the affidavit is made and filed must be called in to preside in such criminal action, motion or proceeding; if there be but one judge in the judicial district, then a district judge of another judicial district must be called in to preside in such criminal action, motion or proceeding; when another judge has assumed jurisdiction of a criminal action, motion or proceeding, the clerk of the district court in which the same was pending, shall at once notify the parties or their attorneys of record in the same, either personally or by registered mail, of the name of the judge called in.

If either party in any matter above mentioned shall file the affidavit as herein provided such party may not complain of any reasonable delay as the result thereof.

The provisions of this section shall be inapplicable to any person in any cause involving a direct contempt of court.

History: En. Sec. 1, Ch. 61, L. 1959; amd. Sec. 1, Ch. 112, L. 1965.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1709.

Title of Act

An act to provide for the disqualification of district judges in criminal actions or proceedings; prescribing the grounds and procedure for disqualification; providing for assumption of jurisdiction by other district judges in event of disqualification; and repealing all other acts and parts of acts in conflict herewith.

Amendment

The 1965 amendment deleted "by reason of the bias and prejudice of such judge" at the end of the first sentence and "for bias and prejudice" following "disqualified" in the last sentence of the first paragraph.

Repealing Clauses

Section 2 of Ch. 61, Laws 1959 and Sec. 2 of Ch. 112, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 112, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 1, 1965.

Right to Disqualify Judge

In a criminal proceeding, this section is the proper statute under which a defendant may disqualify a judge. Section 93-901, which applies only to civil cases, is inapplicable. In re Larocque's Petition, 139 M 405, 365 P 2d 950, 951.

The right to disqualify a judge in a criminal proceeding is purely statutory. It has no constitutional nor common-law basis. Therefore, the conditions precedent in this section must be followed. In re Larocque's Petition, 139 M 405, 365 P 2d 950, 951.

Where defendant filed no affidavit for disqualification of judge in criminal proceeding he waived the provisions of this section. In re Larocque's Petition, 139 M 405, 365 P 2d 950, 951.

Timely Motion

This section requires affidavit of disqualification to be made fifteen days before trial on the merits, and a motion by

the state to disqualify made after the trial and pending a motion for new trial was not timely. State ex rel. Wilson v. District Court, 143 M 543, 393 P 2d 39.

CHAPTER 70—MODE OF TRIAL—FORMATION OF JURY AND CALENDAR OF ISSUES—POSTPONEMENT OF TRIAL

94-7001. (11928) Issue of fact defined.

Repeal

This section (Sec. 1990, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1901.

References

Cited or applied in State v. Duncan, 130 M 562, 305 P 2d 761, 762.

94-7002. (11929) How tried.

Repeal

This section (Sec. 1991, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1901.

Directed Verdict in Criminal Case

In a prosecution for unlawfully driving a truck with an overload which is a misdemeanor, it was error for the court to instruct and direct the jury to return a verdict of guilty where the evidence as to the true weight of the truck was in conflict as shown by two different state police scales. State v. Baillargeron, 126 M 310, 249 P 2d 799, 801.

References

Cited or applied in State v. Winter, 129 M 207, 285 P 2d 149, 159.

94-7003. (11930) Repealed.

Repeal

This section (Sec. 1960, Pen. C. 1895), relating to information or indictment against a judge, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1301 and 95-1410.

94-7004. (11931) When presence of defendant is necessary on the trial.

Repeal

This section (Sec. 165, p. 242, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1904.

Collateral References

Absence of accused at return of verdict in felony case. 23 ALR 2d 456.

Impaneling or selection of jury in accused's absence. 26 ALR 2d 762.

94-7005. (11932) Formation of trial jury.

Repeal

This section (Sec. 166, p. 243, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1905.

Collateral References

Proof as to exclusion of or discrimination against eligible class or race in respect to jury in criminal case. 1 ALR 2d 1291.

Indoctrination by court of persons summoned for jury service as infringing constitutional right of trial by jury. 2 ALR 2d 1104.

Exclusion of women from grand or trial jury panel in criminal case as violation of constitutional rights of accused or as ground for reversal of conviction. 9 ALR 2d 661.

94-7006, 94-7007. (11933, 11934) Repealed.

Repeal

These sections (Sec. 2001, 2002, Pen. C. 1895), relating to calendar of criminal actions, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1906.

94-7008. (11935) Defendant entitled to two days to prepare for trial.

Repeal

This section (Sec. 274, p. 233, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1907.

Continuance

Trial judge did not abuse discretion in denying defendant's application for continuance over the term where trial was set for May 7, 1956, after defendant entered plea of guilty on April 24, 1956. State v. McLeod, 131 M 478, 311 P 2d 400, 407.

References

Cited or applied in State v. Blakeslee, 131 M 47, 306 P 2d 1103, 1104.

94-7009. (11936) Notice and affidavits for postponement.

Repeal

This section (Sec. 269, p. 232, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1708.

References

Cited or applied in State v. Blakeslee, 131 M 47, 306 P 2d 1103, 1104.

94-7010. (11937) Postponement for cause.

Repeal

This section (Sec. 270, p. 232, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1708.

References

Cited or applied in State v. Blakeslee, 131 M 47, 306 P 2d 1103, 1104.

94-7011. (11938) Repealed.

Repeal

This section (Sec. 271, p. 232, Cod. Stat. 1871), relating to continuance by state, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1708.

94-7012. (11939) Effect of failure to apply.

Repeal

This section (Sec. 272, p. 233, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1708.

References

Cited or applied in State v. Blakeslee, 131 M 47, 306 P 2d 1103, 1104.

94-7013. (11940) Case set for trial.

Repeal

This section (Sec. 273, p. 233, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1906.

References

Cited in State v. Saginaw, 124 M 225, 220 P 2d 1021, 1025.

CHAPTER 71—CHALLENGING THE JURY

94-7101. (11941) Definition and division of challenges.

Repeal

This section (Sec. 283, p. 234, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1908 and 95-1909.

Operation and Effect

Sections 94-7101 to 94-7128 provide the procedure for interposing a challenge to the panel or to an individual juror. State v. Deeds, 130 M 503, 305 P 2d 321, 323.

94-7102 to 94-7104. (11942 to 11944) Repealed.

Repeal

These sections (Secs. 2031 to 2033, Pen. C. 1895), relating to challenging the jury, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1908 and 95-1909.

94-7105. (11945) Upon what founded.

Repeal

This section (Sec. 284, p. 234, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1908.

Burden of Proof

Where two jurors did not appear and were not excused when the jury was impaneled but the defendant could not show affirmatively that the panel had not been served, there was no prejudicial error. State v. Moran, 142 M 423, 384 P 2d 777.

Right of Defendant

Failure of a properly notified juror to be present when the jury was impaneled did not invalidate the trial as the defendant had the right only to reject jurors and not to select any particular juror. State v. Moran, 142 M 423, 384 P 2d 777.

References

Cited or applied in State v. Deeds, 130 M 503, 305 P 2d 321, 324.

94-7106. (11946) Repealed.

Repeal

This section (Sec. 285, p. 234, Cod. Stat. 1871), relating to when and how challenge to panel taken, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1908.

94-7107. (11947) Exception, if sufficiency of the challenge be denied.

Repeal

This section (Sec. 2036, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1908.

Operation and Effect

Where defendant filed a verified, specific and detailed challenge to a jury panel and the county attorney did not deny the sufficiency of the facts alleged and the defendant also filed a timely motion for the issuance of a subpoena to the jury commissioners to appear, the trial court could not presume the jury commissioners had performed their duty in selecting the panel; hence, it was error for the trial court to overrule defendant's motion based on the presumption that the jury commissioners had performed in accordance with the law. State v. Deeds, 130 M 503, 305 P 2d 321, 324.

Trial of Facts Required

If a challenge to the panel alleges facts which, if true, would show a material variation from the statutory procedure in making up the jury list, the court could not, on the basis of a presumption that the jury commissioners had done their duty, summarily deny the challenge, particularly in the absence of an exception by the adverse party. State v. Chapman, 139 M 98, 360 P 2d 703.

94-7108. (11948) If exception overruled, court may allow denial, etc.

Repeal

This section (Sec. 2037, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1908.

References

Cited or applied in State v. Deeds, 130 M 503, 305 P 2d 321, 324; State v. Chapman, 139 M 98, 360 P 2d 703.

94-7109. (11949) Denial of challenge, how made, and trial thereof.

Repeal

This section (Sec. 2038, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1908.

Trial of Facts Required

If a challenge to the panel alleges facts which, if true, would show a material variation from the statutory procedure in making up the jury list, the court must try the facts and may not summarily deny the challenge on the basis of a presumption that the jury commissioners have done their duty. State v. Chapman, 139 M 98, 360 P 2d 703.

References

Cited or applied in State v. Deeds, 130 M 503, 305 P 2d 321, 324.

94-7110 to 94-7114. (11950 to 11954) Repealed.

Repeal

These sections (Secs. 2039 to 2043, Pen. C. 1895), relating to challenging the jury, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1908 and 95-1909.

94-7115. (11955) Number of peremptory challenges.

Repeal

This section (Sec. 156, p. 241, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1909.

References

Cited or applied in State v. Porter, 125 M 503, 242 P 2d 984, 985.

94-7116. (11956) Challenges of state.

Repeal

This section (Sec. 157, p. 241, Bannack Stat.; Sec. 1, Ch. 4, L. 1925) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1909.

References

Cited or applied in State v. Porter, 125 M 503, 242 P 2d 984, 985.

94-7117, 94-7118. (11957, 11958) Repealed.

Repeal

These sections (Sec. 286, p. 234, Cod. Stat. 1871; Sec. 1, p. 54, L. 1881; Secs. 2046, 2047, Pen. C. 1895), relating to definition and kind of challenge for cause and general causes of challenge, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1909.

94-7119. (11959) Particular causes of challenge.

Repeal

This section (Sec. 2048, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1909.

Bias of Juror

Where a juror on his voir dire in a burglary case stated that he had formed an opinion based on what he had heard on the radio, television, and read in the newspapers, but had not discussed the case with anyone purporting to know any of the facts about it and declared under oath that he could lay aside his opinion and judge the case solely on the evidence presented, it was not error to deny defendant's challenge. State v. Moran, 142 M 423, 384 P 2d 777.

References

Cited or applied in State v. Porter, 125 M 503, 242 P 2d 984, 985.

94-7120. (11960) Ground of challenge for implied bias.

Repeal

This section (Sec. 286, p. 234, Cod. Stat. 1871; Sec. 1, p. 54, L. 1881) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1909.

References

Cited or applied in State v. Porter, 125 M 503, 242 P 2d 984, 985.

94-7121. (11961) Repealed.

Repeal

This section (Sec. 2050, Pen. C. 1895), relating to exemption from service on jury as not ground of challenge, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1909.

94-7122. (11962) Causes of challenge, how stated.

Repeal

This section (Sec. 2051, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1909.

Challenges for Cause

Where the state challenged three jurors for cause, and the evidence showed that one of the jurors was nearly deaf, and the other two had formed opinions, the court was correct in excusing the jurors for cause. This section is not a limitation upon the power of the court in granting challenges which are warranted. State v. Gates, 131 M 78, 307 P 2d 248.

Knowledge of Facts

Where a juror on his voir dire in a burglary case stated that he had formed an opinion based on what he had heard on the radio, television, and read in the news-

papers, but had not discussed the case with anyone purporting to know any of the facts about it and declared under oath that he could lay aside his opinion and judge the case solely on the evidence presented, it was not error to deny defendant's challenge. State v. Moran, 142 M 423, 384 P 2d 777.

Purpose

The purpose of this section was to require the ground of challenge to be stated before the challenger is in a position to predicate error on the court's refusal to sustain a challenge. It was not intended as a limitation upon the power of the court in granting challenges which the facts warrant. State v. Gates, 131 M 78, 307 P 2d 248, 249.

94-7123 to 94-7126. (11963 to 11966) Repealed.

Repeal

These sections (Secs. 2052 to 2055, Pen. C. 1895), relating to exceptions to challenge and trial of challenge, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1909.

94-7127. (11967) Decision of court to be entered.

Repeal

This section (Sec. 2056, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1909.

Overruling Challenge

Where court relied on answers to last two questions and on the assumption that there was a misunderstanding as to the earlier questions in examining a prospective juror for prejudice, the overruling of the challenge would not be disturbed especially where the defendant had three peremptory challenges left at the time and exercised one to discharge such juror, and fact that defendant regarded other jurors as undesirable on which he might have exercised his challenge gave him no right to have such juror excused for bias where there was no showing that such jurors were disqualified. State v. Allison, 122 M 120, 199 P 2d 279, 286.

94-7128. (11968) Repealed.

Repeal

This section (Sec. 2057, Pen. C. 1895), relating to how challenges taken, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1909.

CHAPTER 72—THE TRIAL

94-7201. (11969) Order of trial.

Repeal

This section (Sec. 1, Ch. 82, L. 1907) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1910.

Instructions

Duty of Court to Instruct

In a rape trial where there was no inconsistency, contradictory evidence, or proof of falsity shown in the prosecutrix's testimony, and no showing of malice or desire for revenge against the accused, it was not error for the court to refuse to give a cautionary instruction. State v. Lagge, 143 M 289, 388 P 2d 792.

Objections

Objection to instruction that it "is not a correct statement of the law; it is not applicable to the facts in this case" does not comply with this section. State v. Hay, 120 M 573, 194 P 2d 232, 237.

Objection to instruction that "it is repetitious and not a correct statement of the law" does not comply with this section. State v. Hay, 120 M 573, 194 P 2d 232, 237.

Any error in giving instructions is not available to appellants on appeal where the record shows no objections made by the appellants. State v. Holt, 121 M 459, 194 P 2d 651, 654.

Where instructions as finally proposed to be given were not objected to by counsel for defendant, the district court by statute was expressly forbidden to grant a new trial and the Supreme Court is forbidden to reverse the cause, even if error existed in such instructions. State v. Donges, 126 M 341, 251 P 2d 254, 255; State v. Bubnash, 142 M 377, 382 P 2d 830.

Opening Statement

It was not a denial of fair trial where the jury was allowed to consider the

proven and admitted fact that the defendant in a first degree assault case had been convicted of three prior felonies, where only one would have served to increase the punishment, when they were instructed that the prior convictions were to be considered only in fixing the punishment if and when the defendant was found guilty of the assault charge. Petition of Jones, 144 M 13, 393 P 2d 780.

Subd. 1
Failure to Read Information

It is not error to fail to read the information, there being no statutory requirement for such procedure. State v. Gall, 135 M 131, 337 P 2d 932.

Subd. 4
Bill of Exceptions

Where attorney for defendant presented bill of exceptions and prayed that the same be signed, settled and allowed, he could not be heard to complain on appeal that his bill of exceptions was not accurate. State v. Pankow, 134 M 519, 333 P 2d 1017, 1020.

References

Cited or applied in State v. Maciel, 130 M 569, 305 P 2d 335, 337.

94-7202. (11970) Repealed.

Repeal

These sections (Sec. 2071, Pen. C. 1895), relating to when order of trial departed from, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1911.

94-7203. (11971) Defendant presumed innocent—reasonable doubt.

Burden of Proof

In criminal cases the burden of proof never shifts, but the burden of the evidence may shift frequently. State v. Moorman, 133 M 148, 321 P 2d 236, 238.

In a prosecution for grand larceny, an instruction which had the effect of placing a burden on the defendant to explain his possession of stolen property was erroneous. Such a burden deprives defendant of his cloak of innocence and forces him to testify. State v. Greeno, 135 M 580, 342 P 2d 1052.

Operation and Effect

In a prosecution for the crime of carrying a concealed weapon; wherein the defendant was found guilty by a jury, it was held on appeal that in view of the uncertainty in the mind of the state's only eyewitness as compared with witnesses for the defendant, coupled with the effect of this section, the evidence was not sufficient to justify a conviction for the crime charged. State v. Gilbert, 125 M 104, 232 P 2d 338, 341.

94-7205. (11973) Repealed.

Repeal

This section (Sec. 301, p. 236, Cod. Stat. 1871), relating to separate trials, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1504.

94-7206. (11974) Discharging defendant that he may be a witness.

Cross-References

Charging an offense, joinder of offenses and defendants, sec. 95-1504.

94-7207. (11975) Same.

Cross-References

Charging an offense, joinder of offenses and defendants, sec. 95-1504.

94-7208. (11976) Effect of such discharge.

Cross-References

Charging an offense, joinder of offenses and defendants, sec. 95-1504.

94-7209. (11977) Rules of evidence in civil actions, etc.

Adverse Witness Statute

In a criminal case the state of Montana is the opposite party to the defendant, and former section 93-1901-9, relating to calling the opposite party, is not applicable to a criminal proceeding. State v. Moorman, 133 M 148, 321 P 2d 236, 238.

Inspection of Writings

Even if section 93-8301 [now superseded by M. R. Civ. P., Rule 34] is made applicable to criminal cases by this section, defendant was not entitled to the inspection of written materials, where there was no showing as to what the material consisted of, whether it was relevant to the defense, or that it was admissible in evidence. State ex rel. Keast v. District Court, 135 M 545, 342 P 2d 1071.

Physician-Patient Privilege

The physician-patient privilege is not available to a defendant in a criminal action, since the qualifying language "in a civil action" used in section 93-701-4, subsection (4), specifically limits the privilege to civil actions and is thus within the exception of this section. State v. Campbell, 146 M 251, 405 P 2d 978.

References

Cited or applied in State v. Storm, 127 M 414, 265 P 2d 971, 976 (dissenting opinion); State v. Piveral, 127 M 427, 265 P 2d 969, 970 (dissenting opinion); State v. Reid, 127 M 552, 267 P 2d 986, 990.

94-7220. (11988) Conviction on testimony of accomplice.

Cross-Reference

Child under sixteen not an accomplice to commission of infamous crime against nature, sec. 94-4120.

Corroboration

The evidence which corroborates the testimony of an accomplice could be furnished by the defendant. It could be circumstantial. It need not extend to every fact to which the accomplice testified and need not be sufficient to justify a conviction or establish a prima facie case of guilt: it being sufficient if it tends to connect defendants with the commission of the crime. Whether it tends to do so is a question of law, while its weight—its efficacy to fortify the testimony of the accomplice and render his story trustworthy—is a matter for the consideration of the jury. State v. Donges, 126 M 341, 251 P 2d 254, 257.

In a legal sense corroboration is something which leads an impartial and reasonable mind to believe that material testimony is true; it may also consist of admissions, declarations or conduct of the defendant, writings, or other documentary evidence which tends to show concert of action between the accomplice and the defendant. State v. Harmon, 135 M 227, 340 P 2d 128; State v. Moran, 142 M 423, 384 P 2d 777.

Instructions

Where the defense requested instructions as to the effect of accomplice's testimony and there was evidence in the record from which the jury might have concluded that a deputy sheriff was an accomplice of the defendant, the court should have instructed the jury that if they believed the deputy sheriff was an accomplice then they must weigh his evidence as provided by section 93-2001-1, subd. 4 and also that such evidence must be corroborated as required by this section. State v. Porter, 125 M 503, 242 P 2d 984, 990.

Insufficient Corroboration

In a prosecution for an infamous crime against nature, where the only evidence other than the testimony of the accomplice showed that the accomplice had stayed at the defendant's house over night and slept with the defendant, the corroborating evidence was not sufficient to sustain a conviction as it does nothing more than to show opportunity on the part of defendant to have committed the crime. State v. Gangner, 130 M 533, 305 P 2d 338.

Operation and Effect

In a sodomy case, court should have given the requested instructions of the defendant to the effect that if the jury finds the prosecuting witness was an accomplice, then the jury must acquit the defendant, where the only evidence connecting the defendant with the commission of the crime was the testimony of the prosecuting witness. State v. Searle, 125 M 467, 239 P 2d 995, 998.

Person Making Forged Instrument Not Accomplice of Person Passing Forged Instrument

The testimony of the person who forged the indorsement on a warrant and who was not implicated in the matter of passing or uttering the instrument is corroborating evidence to the testimony of an accomplice of the defendant charged with uttering the forged instrument. The person who forged the indorsement is not an accomplice to the defendant who uttered the instrument as the making of the instrument and the uttering of it are two separate crimes although they both constitute forgery. State v. Phillips, 127 M 381, 264 P 2d 1009, 1014. (See, however, the dissenting opinions in 127 M 381, 264 P 2d 1009, 1016, 1018.)

Sufficiency of Corroborative Evidence

Corroborating evidence need not be direct, but may be circumstantial; it need not be sufficient to justify a conviction, or to establish a prima facie case of guilt;

it need not be sufficient to connect the defendant with the commission of the crime, but it is sufficient if it tends to do so. State v. Harmon, 135 M 227, 340 P 2d 128.

Evidence was sufficient to corroborate the testimony given by alleged accomplice where the record disclosed facts and circumstances which tended to connect the defendant with the commission of burglary in the first degree. State v. Laverdure, 140 M 236, 370 P 2d 489, 491; State v. Barick, 143 M 273, 389 P 2d 170.

Weight Given Corroborative Evidence

If the trial judge is satisfied that the evidence is corroborative, it is his duty to submit the case to the jury to determine what effect should be given to the corroboration and whether it is sufficient to warrant a conviction. State v. Harmon, 135 M 227, 340 P 2d 128.

94-7221 to 94-7226. (11989 to 11994) Repealed.

Repeal

These sections (Sec. 188, p. 246, Bannack Stat.; Secs. 309, 317, pp. 237, 238, Cod. Stat. 1871; Secs. 2090 to 2095, Pen. C. 1895), relating to mistake in indictment or information and discharge of jury for lack of jurisdiction, etc., were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1706 and Title 95, ch. 19.

94-7227. (11995) When evidence on either side is closed, etc.

Repeal

This section (Sec. 2096, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1909 and 95-2403.

Directing Jury to Acquit Defendant

Where there is an utter failure or lack of evidence to establish the states case court may direct the jury to return a verdict for the defendant. State v. Widdicombe, 130 M 325, 301 P 2d 1116, 1118.

Operation and Effect

This section is applicable only in cases in which the trial court deems the evidence, although tending to prove every element constituting the crime charged, insufficient in weight to warrant a conviction. State v. Peschon, 131 M 330, 310 P 2d 591, 595.

References

Cited or applied in State v. Perez, 126 M 15, 243 P 2d 309, 311; State v. Allen, 128 M 306, 275 P 2d 200, 205.

94-7228. (11996) View of place of offense or property.

Repeal

This section (Sec. 321, p. 239, Cod. Stat. 1871; Sec. 1, Ch. 113, L. 1907) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1912.

Condition of Premises

The fact that the premises to be viewed had accumulated dirt which had been hastily swept away, that doors had been replaced and the view was bleak and morbid furnished no ground for interfering with an order permitting a view of the premises. State v. Allison, 122 M 120, 199 P 2d 279, 292.

Discretion of Court

The matter of permitting the jury to view the premises rests entirely in the discretion of the trial court which will not be interfered with except in case of manifest abuse. State v. Allison, 122 M 120, 199 P 2d 279, 292.

94-7229. (11997) Repealed.

Repeal

This section (Sec. 192, p. 246, Bannack Stat.), relating to knowledge of juror respecting fact in controversy, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see Title 95, ch. 19.

94-7230. (11998) Jurors, separation of, during trial.

Repeal

This section (Sec. 2099, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1913.

Collateral References

Separation of jury in criminal case. 21 ALR 2d 1088.

94-7231 to 94-7233. (11999 to 12001) Repealed.

Repeal

These sections (Sec. 193, p. 246, Bannack Stat.; Sec. 324, p. 239, Cod. Stat. 1871; Secs. 2100 to 2102, Pen. C. 1895;

Sec. 1, Ch. 54, L. 1935), relating to admonishment of jurors, jurors unable to perform duties, and decisions on questions of law by court, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1901, 95-1904, 95-1909, 95-1912 and 95-1913.

94-7235. (12003) Repealed.

Repeal

This section (Sec. 116, p. 205, Bannack Stat.), relating to jury determination of law and fact on trial for libel, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1901.

94-7236. (12004) In all other cases court to decide questions of law.

Repeal

This section (Sec. 2105, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1901.

References

Cited or applied in State v. Strobel, 130 M 442, 304 P 2d 606, 613; State v. Barick, 143 M 273, 389 P 2d 170.

94-7237, 94-7238. (12005, 12006) Repealed.

Repeal

These sections (Sec. 194, p. 246, Bannack Stat.; Secs. 2106, 2107, Pen. C. 1895), relating to power of jury to decide in court or to retire in custody for deliberation and commitment of defendant appearing for trial, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1111, 95-1913 and 95-1915.

94-7239. (12007) If county attorney fails to attend, court may appoint.

Repeal

This section (Sec. 2108, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1903 and 95-1913.

References

Cited or applied in State v. Cockrell, 131 M 254, 309 P 2d 316, 319.

CHAPTER 73—CONDUCT OF JURY AFTER SUBMISSION OF CASE

(Repealed—Section 2, Chapter 196, Laws of 1967)

94-7301 to 94-7308. (12009 to 12016) Repealed.

Repeal

These sections (Secs. 323, 330 to 332, pp. 239, 240, Cod. Stat. 1871; Secs. 2120 to 2127, Pen. C. 1895; Sec. 1, Ch. 29, L. 1945), relating to conduct of jury after submission of case, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1913 and 95-1914.

CHAPTER 74—THE VERDICT

94-7401 to 94-7406. (12017 to 12022) Repealed.

Repeal

These sections (Secs. 195, 196, p. 247, Bannack Stat.; Secs. 2140 to 2145, Pen. C. 1895), relating to the verdict, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1904 and 95-1915 and Title 95, ch. 22.

94-7407. (12023) Jury may find upon charge of previous conviction.

Repeal

This section (Sec. 2146, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1506.

Amended Information

Where the state on the day of trial filed an amended information changing the charge from robbery, to robbery and a prior conviction of forgery, and the defendant was given no opportunity to either admit or deny the previous conviction, such amendment was substantive, increased the minimum penalty, and was

reversible error. State v. Knight, 143 M 27, 387 P 2d 22.

Plea of Guilty

This statute contemplated that the answer to charge or allegation of prior conviction should be an admission or denial, but a plea of guilty is an admission of the charge. State ex rel. Treat v. District Court, 122 M 249, 200 P 2d 248, 249.

Plea of Not Guilty

Contention of petitioner for writ of habeas corpus that his confinement was illegal because information was amended before trial to charge a previous conviction of a felony and that while he entered a plea of not guilty to such charge of previous conviction the jury made no reference to it in their verdict, as provided by this section, was completely false, where the verdict of the jury stated that the jury found defendant guilty of the crime of felony, to wit: lewd and lascivious act upon a child, as alleged in the information, and found the charge of previous conviction of felony, to wit: lewd and lascivious acts upon a child as alleged in the information true and left the fixing of his punishment to the court. In re Davis' Petition, 139 M 622, 365 P 2d 948, 949.

References

Petition of Jones, — M —, 393 P 2d 780.

94-7408 to 94-7410. (12024 to 12026) Repealed.

Repeal

These sections (Sec. 197, p. 247, Bannack Stat.; Secs. 2147 to 2149, Pen. C. 1895), relating to conviction of lesser offense or of attempt, verdict as to some defendants and new trial as to others, and duty to ascertain value of property, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1915.

94-7411. (12027) Jury may assess punishment.

Repeal

This section (Sec. 198, p. 247, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see Title 95, ch. 19 and sec. 95-2212.

References

State ex rel. Wilson v. District Court, 143 M 543, 393 P 2d 39.

94-7412. (12028) Court may assess punishment.

Repeal

This section (Sec. 199, p. 247, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see Title 95, ch. 19 and sec. 95-2212.

References

State ex rel. Wilson v. District Court, 143 M 543, 393 P 2d 39.

94-7413, 94-7414. (12029, 12030) Repealed.

Repeal

These sections (Secs. 200, 201, p. 248, Bannack Stat.), relating to assessment of punishment by court and reduction of verdict, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see Title 95, ch. 19 and sec. 95-2212.

94-7415. (12031) Court may reduce verdict.

Repeal

This section (Sec. 202, p. 248, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see Title 95, ch. 19 and sec. 95-2212.

References

State ex rel. Wilson v. District Court, 143 M 543, 393 P 2d 39.

94-7416 to 94-7420. (12032 to 12036) Repealed.

Repeal

These sections (Secs. 334, 335, 337, p. 240, Cod. Stat. 1871; Secs. 2155 to 2159, Pen. C. 1895), relating to polling jury, juror in contempt, discharge of acquitted defendant, proceedings upon conviction and proceedings on acquittal for insanity, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-506, 95-508, 95-1109, 95-1915 and 95-1916.

CHAPTER 75—BILLS OF EXCEPTION

94-7501 to 94-7503. (12037 to 12039) Repealed.

Repeal

These sections (Secs. 2170 to 2173, Pen. C. 1895), relating to bills of exception, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968.

94-7504. (12040) Exceptions, how settled by supreme court.

Repeal

This section (Sec. 2143, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968.

References

Cited or applied in State ex rel. Toner v. District Court, 127 M 603, 256 P 2d 1095.

94-7505, 94-7506. (12041, 12042) Repealed.

Repeal

These sections (Sec. 2175, Pen. C. 1895; Sec. 15, Ch. 225, L. 1921), relating to bills of exception, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968.

94-7507. (12044) Settlement of bills of exceptions.

Repeal

This section (Sec. 1, Ch. 34, L. 1903) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968.

Operation and Effect

Since the responsibility for the preparation of the bill of exceptions lies with the appellant, he cannot be heard to complain on appeal that his own bill of exceptions is not accurate. State v. Pankow, 134 M 519, 333 P 2d 1017, 1020.

Provisions Mandatory

Compliance with this section is mandatory. State v. Kuntz, 130 M 126, 295 P 2d 707, 708.

Where the time for presenting the bill of exceptions to the judge has expired the judge has lost jurisdiction after that to settle any bill of exceptions for the defendant. Such jurisdiction, once lost, could not be reinvested in the trial judge even by the stipulation of counsel. State v. Kuntz, 130 M 126, 295 P 2d 707, 708.

Waiver of Notice

Where the county attorney made no objection to the want of notice in the district court and actually stipulated that he had no amendments to offer and that the bill of exceptions as proposed was correct, then this constituted a waiver of formal notice. State v. Nelson, 130 M 466, 304 P 2d 1110, 1112.

94-7508. (12045) Record on appeal in criminal cases.

Repeal

This section (Sec. 2, Ch. 34, L. 1903; Sec. 16, Ch. 225, L. 1921) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968.

Dismissal of Appeal

The state's motion to dismiss an appeal will be granted where the defendant, although filing a notice of appeal, did not have settled or allowed a bill of exceptions, and omitted to file a transcript or briefs in the Supreme Court when no extension of time has been granted and no showing that the appellant's failure and omission has been without laches on his part. State v. McDonald, 125 M 201, 232 P 2d 997.

CHAPTER 76—NEW TRIALS

94-7601. (12046) Repealed.

Repeal

This section (Sec. 2190, Pen. C. 1895), relating to definition of new trial, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2101.

94-7602. (12047) Its effect.

Repeal

This section (Sec. 352, p. 242, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2101.

Operation and Effect

When a first conviction is set aside the defendant is not precluded upon a remand for a new trial from attacking the indictment or information. State v. Hale, 129 M 449, 291 P 2d 229, 230, overruled on another point in 142 M 459, 462, 384 P 2d 749. (Dissenting opinion, 129 M 449, 291 P 2d 229, 236.)

References

Cited in State ex rel. Nelson v. Ellsworth, 141 M 78, 375 P 2d 316, 318.

94-7603. (12048) Grounds for granting new trial.

Repeal

This section (Sec. 353, p. 242, Cod. Stat. 1871; Sec. 1, p. 43, L. 1881; Sec. 1, Ch. 150, L. 1931) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2101.

Subd. 4

Operation and Effect

In a prosecution for statutory rape, there was no error where the jury reached a verdict of guilty, and then, in deciding on punishment, each member set down his proposed amount in years, the total was divided by twelve to get an average, and then the term of the punishment was fixed after further discussion. State v. Moorman, 133 M 148, 321 P 2d 236, 242.

A quotient verdict is not a lot verdict. State v. Moorman, 133 M 148, 321 P 2d 236, 243.

Subd. 7

Contradictory Statements by Witness

Where the key witness at the trial in which defendant was convicted of larceny made statements after the trial demonstrating that the testimony he gave was false and perjurious and, at the hearing on defendant's motion for new trial, the witness refused to give any testimony, the requirements for the granting of a new trial on the ground of newly discovered evidence were met and the defendant should have been granted a new trial. State v. Greeno, 135 M 580, 342 P 2d 1052.

Motion for New Trial after Appeal Perfected

Once an appeal has been perfected to the Supreme Court the district court loses jurisdiction of the case, except that if a motion for a new trial is then pending the district court retains jurisdiction thereof, with power to rule thereon. State v. Nicks, 131 M 567, 312 P 2d 519, 520.

Where defendant had perfected an appeal to the Supreme Court, and then discovered new evidence, the Supreme Court had no jurisdiction to grant a new trial, but upon defendant's prima facie showing of matters sufficient to warrant consideration, the court would instruct the district court to entertain defendant's motion for a new trial, and would stay further proceedings pending such motion. State v. Nicks, 131 M 567, 312 P 2d 519, 521.

References

Cited or applied in State v. Winter, 129 M 207, 285 P 2d 149, 159; State v. Moorman, 133 M 148, 321 P 2d 236, 243; Petition of Davis, 139 M 619, 361 P 2d 963; Petition of Jones, 142 M 619, 386 P 2d 74.

94-7604. (12049) Applications for, how made.

Repeal

This section (Sec. 1, p. 43, L. 1881) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2101.

References

Cited or applied in State v. Nicks, 131 M 567, 312 P 2d 519, 520; Petition of Davis, 139 M 619, 361 P 2d 963; Petition of Jones, 142 M 619, 386 P 2d 74.

94-7605. (12050) Motions for new trial, how made—hearing.

Repeal

This section (Sec. 1, p. 43, L. 1881; Sec. 17, Ch. 225, L. 1921) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2101.

Counteraffidavit

Failure of trial court to grant motion for new trial in first degree murder case on alleged newly discovered evidence was not reversible error where counteraffidavit by county attorney showed that his office investigated each of the people named in the affidavits and that each of the parties denied that they had any evidence or information relative to the case. State v. Cor, — M —, 396 P 2d 86, 101. (Dissenting opinion, — M —, 396 P 2d 86, 102.)

References

Petition of Davis, 139 M 619, 361 P 2d 963.

CHAPTER 77—ARREST OF JUDGMENT

(Repealed—Section 2, Chapter 196, Laws of 1967)

94-7701 to 94-7704. (12051 to 12054) Repealed.

Repeal

These sections (Secs. 238 to 240, p. 253, Bannack Stat.; Secs. 2200 to 2203, Pen. C. 1895), relating to arrest of judgment, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968.

CHAPTER 78—JUDGMENT—SUSPENSION OF SENTENCE AND PROBATION

Section 94-7821. Court may suspend sentence, when.
94-7822. Suspension of sentence—copy of judgment to be mailed to board of pardons and bureau of identification.
94-7824. Effect of suspended sentence.
94-7831. Investigation.
94-7832. Sentence.
94-7833. Information from courts.
94-7834. Effective date—application to persons presently on parole or probation or eligible to be placed thereon.
94-7835. Court to determine type of confinement.
94-7836. Continuation of work.
94-7837. Disposition of prisoner's earnings.
94-7838. Reduction of sentence.
94-7839. Violation.
94-7840. Work arrangement in another county.
94-7841. Persons guilty of contempt.

94-7801. (12055) Appointing time for judgment.

Repeal

This section (Sec. 360, p. 244, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2202.

References

State v. Porter, 143 M 528, 391 P 2d 704.

94-7802. (12056) Repealed.

Repeal

This section (Sec. 2211, Pen. C. 1895), relating to determination of degree of crime after guilty plea, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see Title 95, ch. 22.

94-7803. (12057) Presence of defendant.

Repeal

This section (Sec. 362, p. 244, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1904.

Court May Vacate and Repronounce Sentence

Where the trial court pronounced sentence against defendant convicted of second degree assault while defendant was absent, it was not error for the court, on its own motion, to vacate the sentence and repronounce the same sentence two days later in the presence of the defendant and his attorney. State v. Porter, 143 M 528, 391 P 2d 704.

94-7804 to 94-7809. (12058 to 12063) Repealed

Repeal

These sections (Sec. 208, p. 249, Bannack Stat.; Secs. 2213 to 2218, Pen. C. 1895), relating to presence of defendant for judgment and warrant for and arrest of defendant, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see Title 95, ch. 6, secs. 95-1107 and 95-1123 and Title 95, ch. 22.

94-7810. (12064) Arraignment of defendant for judgment.

Repeal

This section (Sec. 210, p. 249, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2305.

References

Kuhl v. District Court, 139 M 536, 366 P 2d 347, 354.

94-7811. (12065) What cause may be shown against the judgment.

Repeal

This section (Sec. 2220, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see Title 95, ch. 21 and sec. 95-2601.

References

Kuhl v. District Court, 139 M 536, 366 P 2d 347, 355.

94-7812. (12066) If no cause shown, judgment to be pronounced.

Repeal

This section (Sec. 211, p. 249, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2206.

References

Kuhl v. District Court, 139 M 536, 366 P 2d 347, 355.

94-7813. (12067) Circumstances in aggravation or mitigation, etc.

Repeal

This section (Sec. 2222, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-2203 to 95-2205.

Examination of Witnesses in Open Court

The extent of defendant's punishment on plea of guilty to grand larceny should have been determined under section 94-2706 by the exercise of a sound discretion on the part of the trial judge after the circumstances had been "presented by the testimony of witnesses examined in open court" specifically provided for in this section and section 94-7814 subject to the provisions of section 94-7831. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 351.

If and when the trial judge requests a written report of investigation provided for in section 94-7831, then he must be governed by the provisions of this section and section 94-7814. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 363.

References

Petition of Amor, 143 M 305, 389 P 2d 54.

94-7814. (12068) Testimony, how presented.

Repeal

This section (Sec. 2223, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-2203 to 95-2205.

Discretion of Trial Court

This section does not confer upon the trial court the choice or discretion to determine for itself whether the provisions of section 94-7813 and this section shall be observed or applied, or whether such provisions shall be ignored, either in part or in toto. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 352.

Examination of Witnesses in Open Court

Where defendant pleaded guilty to grand larceny, the extent of his punishment should have been determined under section 94-2706 by the exercise of a sound discretion on the part of the trial judge after the circumstances had been "presented by the testimony of witnesses examined in open court" specifically provided for in this section and section 94-7813 subject to the provisions of section 94-7831. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 351.

If and when the trial judge requests a written report of investigation provided for in section 94-7831, then he must be governed by the provisions of this section and section 94-7813. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 363.

The sentence of a defendant, who pleaded guilty to grand larceny, to four years in the state prison, pursuant to section 94-2706, was reduced to one year by the supreme court where the trial court passed sentence upon receipt of private reports, including one requested by the trial judge as provided in section 94-7831, without allowing defendant or his counsel to learn of the representations in the reports and a hearing to present evidence to refute such representations. Kuhl v.

District Court, 139 M 536, 366 P 2d 347, 365.

Report of Investigator

Where trial judge requested report provided for in section 94-7831, unsworn representations and recommendations set forth in investigator's unsigned report privately offered to and privately received and adopted by the trial judge did not measure up to the requirements of this section and were not evidence. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 364.

References

Petition of Amor, 143 M 305, 389 P 2d 54.

94-7815. (12069) **Duration of imprisonment on judgment to pay a fine.**

Repeal

This section (Sec. 212, p. 249, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2215.

Concurrent Sentences

Where defendant was convicted of a felony under the first portion of a consolidated information and of a misdemeanor under the second portion and the trial court decreed that the sentences could be served concurrently, the sentence for the felony should be served in the state prison, credit for the misdemeanor fine should be given at the same time, and any remaining time under the misdemeanor at the end of the state prison term should be served in the county jail. State v. Bogue, 142 M 459, 384 P 2d 749.

94-7816 to 94-7820. (12070 to 12074) **Repealed.**

Repeal

These sections (Secs. 389, 390, p. 248, Cod. Stat. 1871; Sec. 1, pp. 32, 33, L. 1883; Sec. 18, Ch. 225, L. 1921), relating to payment of costs by prosecutor, discharge of pauper prisoner and in other cases, lien of judgment to pay fine and entry of judgment and judgment roll, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-202, 95-2208, 95-2209, 95-2215 and 95-2302.

94-7821. (12078) **Court may suspend sentence, when.** In all prosecutions for crimes or misdemeanors, except as hereinafter provided, where the defendant has pleaded or been found guilty, or where the court or magistrate has power to sentence such defendant to any penal or other institution in this state, and it appears that the defendant has never before been imprisoned for crime either in this state or elsewhere (but detention in an institution for juvenile delinquents shall not be considered imprisonment), and where it appears to the satisfaction of the court that the character of the defendant and circumstances of the case are such that he is not likely again to engage in an offensive course of conduct, and where it may appear that the public safety does not demand or require that the defendant shall suffer the penalty imposed by law, said court may suspend the execution of the sentence and place the defendant on probation in the manner hereinafter provided. Nothing in this act contained shall in any manner affect the laws providing the method of dealing with the juvenile delinquents. Any judge, who has suspended a sentence of imprisonment under this section, or his successor, is authorized thereafter, in his discretion, during the period of such suspended sentence to revoke such suspension and order such person committed, or may, in his discretion, order the prisoner placed under the jurisdiction of the state board of pardons as provided by law, or retain such jurisdiction with his court as is authorized by him or his successor. Prior to such revocation of the order of such suspension, the person affected shall be given a hearing before said judge.

History: En. Sec. 1, Ch. 21, L. 1913; re-en. Sec. 12078, R. C. M. 1921; amd. Sec. 1, Ch. 184, L. 1937; amd. Sec. 1, Ch. 194, L. 1955.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2206.

Amendment

The 1955 amendment substituted "state board of pardons" for "state board of prison commissioners."

Repealed by Implication

This chapter repealed section 94-4717, R. C. M. 1947, by implication as far as any application to suspended sentence is concerned. State ex rel. Wetzel v. Ellsworth, 143 M 54, 387 P 2d 442.

Revocation of Suspension

Where relator was sentenced to four years' confinement and the execution of the sentence was then suspended, which suspension was later revoked, the sentence commenced to run for all purposes on the date when judgment of conviction was entered. Any time between the imposition of the suspended sentence and its revocation should have been credited to the relator and failure to do so resulted in his illegal confinement. State ex rel. Wetzel v. Ellsworth, 143 M 54, 387 P 2d 442.

References

State ex rel. Wilson v. District Court, 143 M 543, 393 P 2d 39.

94-7822. Suspension of sentence—copy of judgment to be mailed to board of pardons and bureau of identification. When any judge has suspended a sentence of imprisonment as provided in section 94-7821, and has not ordered the prisoner placed under the jurisdiction of the state board of pardons, but has retained jurisdiction with the court, the clerk of said court shall nevertheless mail a full copy of the judgment of the court and the order suspending the sentence and certify the same to the state board of pardons, and bureau of identification at the state prison, or if the defendant would have been confined to an institution other than the state prison, then a copy shall be sent to the institution to which said court would have committed the defendant but for the suspending of the sentence.

History: En. Sec. 1, Ch. 40, L. 1939; amd. Sec. 2, Ch. 194, L. 1955.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2210.

Amendment

The 1955 amendment substituted "state board of pardons" for "state board of prison commissioners."

Collateral References

Propriety and effect of court's indication to jury resulting in recommendation of suspended sentence. 8 ALR 2d 1001.

94-7823. (12079) **Repealed.**

Repeal

This section (Sec. 2, Ch. 21, L. 1913; amd. Sec. 1, Ch. 53, L. 1935; amd. Sec. 1, Ch. 65, L. 1953), relating to persons not entitled to probation, was repealed by Sec. 4, Ch. 194, Laws 1955, effective April 1, 1955.

94-7824. (12080) **Effect of suspended sentence.** Whenever a sentence to any penal or other institution in this state has been imposed, but the execution thereof has been suspended and the defendant placed on probation, the effect of such order of probation shall be to place said defendant under the control and management of the state board of pardons and he shall be subject to the provisions of the probation, parole and executive clemency act.

History: En. Sec. 3, Ch. 21, L. 1913; re-en. Sec. 12080, R. C. M. 1921; amd. Sec. 3, Ch. 194, L. 1955.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see Title 95, ch. 22.

Amendment

The 1955 amendment substituted "state board of pardons" for "state board of

prison commissioners" and "subject to the provisions of the probation, parole and executive clemency act" for "subject to the same rules and regulations as applied to persons paroled from said institutions after a period of imprisonment therein."

Repealing Clause

Section 4 of Ch. 194, Laws 1955 read "That sections 94-7823, 94-7825, 94-7826, 94-7827, 94-7828, 94-7829 and 94-7830 of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith, be, and the same are hereby repealed."

94-7825 to 94-7830. (12081 to 12086) **Repealed.**

Repeal

These sections (Secs. 4 to 9, Ch. 21, L. 1913), relating to probation, were repealed by Sec. 4, Ch. 194, Laws 1955, effective April 1, 1955.

94-7831. Investigation. No defendant convicted of a crime, the punishment for which may include imprisonment in the state prison, shall be sentenced or his case otherwise disposed of, until a written report of investigation by a probation and parole officer shall have been presented to, and considered by, the court, unless the court deems such report unnecessary. The court may, in its discretion, order a pre-sentence investigation for a defendant convicted of any lesser crime or offense. Whenever an investigation is required, the probation and parole officers shall promptly inquire into the circumstances of the offense, the attitude of the complainant, the social history, criminal record, and the present conditions of the defendant and his immediate family. All local and state police agencies shall furnish to the probation and parole officer such criminal records as the probation and parole officer may request. Where, in the opinion of the court or the investigating authority, it is found desirable, such investigation shall include a physical and mental examination of the defendant. If a defendant is committed to an institution, the investigating agency shall send a report of such investigation to the institution at the time of commitment.

History: En. Sec. 5, Ch. 194, L. 1955.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-2203 to 95-2205.

Title of Act

An act to amend sections 94-7821, 94-7822, and 94-7824 of the Revised Codes of Montana, 1947, by substituting the words "Board of Pardons" for "Board of Prison Commissioners" and referring to the provisions of the Probation, Parole and Executive Clemency Act; providing for investigation by probation and parole officers prior to sentencing an individual convicted of a crime, if deemed necessary by the court; providing the sentences courts are authorized by law to impose; requiring courts to transmit to board of pardons certain statistical data; repealing sections 94-7823, 94-7825, 94-7826, 94-7827, 94-7828, 94-7829 and 94-7830 of the Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith; providing a saving clause; and providing an effective date clause.

Examination of Witnesses in Open Court

Where defendant pleaded guilty to grand larceny, the extent of his punishment should have been determined under section 94-2706 by the exercise of a sound discretion on the part of the trial judge after the circumstances had been "presented by the testimony of witnesses examined in open court" specifically provided for in sections 94-7813 and 94-7814 subject to the provisions of this section. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 351.

If and when the trial judge requests a written report of investigation provided for in this section, then he must be governed by the provisions of sections 94-7813 and 94-7814. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 363.

The sentence of a defendant, who pleaded guilty to grand larceny, to four years in the state prison, pursuant to section 94-2706, was reduced to one year by the supreme court where trial court passed sentence upon receipt of private reports without allowing defendant or his counsel to learn of the representations in the reports and a hearing to present evidence

to refute such representations. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 365.

Report of Investigator

Unsworn representations and recommendations set forth in an investigator's unsigned report privately offered to and privately received and adopted by the trial judge does not measure up to the requirements of section 94-7814. They are not evidence. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 364.

References

Petition of Amor, 143 M 305, 389 P 2d 54.

94-7832. Sentence. Whenever any person has been found guilty of a crime or offense upon verdict or plea, the court may adjudge as follows:

(1) Release the defendant on probation, (2) Suspend the imposition or execution of sentence, (3) Impose a fine as provided by law for the offense, (4) Impose any combination of (1), (2), (3), or, (5) Commit the defendant to a correctional institution with or without a fine as provided by law for the offense.

History: En. Sec. 6, Ch. 194, L. 1955.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2206.

94-7833. Information from courts. It shall be the duty of the court disposing of any criminal case to cause to be transmitted to the board of pardons statistical data in accordance with regulations issued by the board regarding all dispositions of defendants whether found guilty or discharged.

History: En. Sec. 7, Ch. 194, L. 1955.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2210.

94-7834. Effective date—application to persons presently on parole or probation or eligible to be placed thereon. This act shall be in full force and effect from and after April 1, 1955. The provisions of this act are hereby extended to all persons who, at the effective date hereof, may be on probation or parole, or eligible to be placed on probation or parole under existing laws with the same force and effect as if this act had been in operation at the time such persons were placed on probation or parole or became eligible to be placed thereon, as the case may be, provided that no person convicted and sentenced before the effective date shall have his rights and earned good time reduced by the application of this act.

History: En. Sec. 9, Ch. 194, L. 1955.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see Title 95, ch. 22.

Separability Clause

Section 8 of Ch. 194, Laws 1955 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

Forfeiture of Good Time Allowance

Under the provision of this section "that no person convicted and sentenced before the effective date shall have his rights and earned good time reduced by the application of this act" which in no matter attempts to prohibit the board of prison commissioners from exercising their discretionary power as to the allowance or forfeiture of good time and their power to make such rules and regulations as are reasonable in connection with this power,

the board can deprive a prisoner of his good time for parole violations. In re Pelke's Petition, 139 M 354, 365 P 2d 932, 934; In re Owens' Petition, 139 M 637, 365 P 2d 935.

94-7835. Court to determine type of confinement. A court, after having sentenced a person to confinement in a county jail, may, in its discretion, upon request of the county attorney and sheriff of such county, and with the consent of the convicted person, order that any part of the imprisonment so imposed be served in confinement, with parole during the hours or periods the convicted person is actually employed.

History: En. Sec. 1, Ch. 249, L. 1959.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2216.

Title of Act

An act authorizing the court to sentence a convicted misdemeanant to confinement with parole during the periods of the prisoner's employment; specifying the disposition to be made of the prisoner's earnings; setting forth conditions for diminution of the misdemeanant's sentence; declaring the consequences of the prisoner's violation of parole conditions; extending the provisions of this act to jail commitments for adjudicated contempt of a court of record; containing a savings clause, effective date and repealing all acts and parts of acts in conflict.

94-7836. Continuation of work. Upon the issuance of such an order under this act, the sheriff shall arrange for the convicted person to continue his regular employment without interruption insofar as is reasonably possible; provided, however, that said prisoner shall be confined in the county jail during the hours when he is not employed.

History: En. Sec. 2, Ch. 249, L. 1959.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2216.

94-7837. Disposition of prisoner's earnings. The earnings of the prisoner shall be collected by the sheriff. From such earnings, the sheriff shall pay the prisoner's board and personal expenses, both inside and outside the jail and, to the extent directed by the court, pay the support of his dependents, if any, and any balance shall be retained until his discharge.

History: En. Sec. 3, Ch. 249, L. 1959.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2216.

94-7838. Reduction of sentence. The committing court may, in its discretion, upon request of the county attorney and sheriff of such county, reduce the sentence of the prisoner up to one-fourth of the full term, if, in the opinion of the court, the prisoner's conduct, diligence and general attitude merit such diminution.

History: En. Sec. 4, Ch. 249, L. 1959.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2216.

94-7839. Violation. In cases where the convicted person violates the conditions of said sentence, he shall be returned to the court; the court may then require that the balance of his sentence be spent in full confinement and, further, the court may cancel any diminution of sentence granted under this act.

History: En. Sec. 5, Ch. 249, L. 1959.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2216.

94-7840. Work arrangement in another county. The court may, by order, authorize the sheriff of the sentencing county to arrange with a sheriff of any other county within the state of Montana, to have the convicted person transferred to the other county where it appears the convicted person can continue his regular employment in the latter county; provided, however, when such transfer has been made to another county, the sheriff of the sentencing county shall still collect all moneys earned by the convicted person, and shall dispose of said moneys as provided by section 3 [94-7837] of this act.

History: En. Sec. 6, Ch. 249, L. 1959.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2216.

94-7841. Persons guilty of contempt. The provisions of this act shall extend to a person committed to the county jail by a court of record upon an adjudication of contempt of court.

History: En. Sec. 7, Ch. 249, L. 1959.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see Title 95, ch. 22.

Savings Clause

Section 8 of Ch. 249, Laws 1959 read "If any competent court shall find any section or sections of this act to be unconstitutional or otherwise invalid, such finding shall not affect the validity of all remaining sections of this act, which can be given effect."

Repealing Clause

Section 9 of Ch. 249, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 10 of Ch. 249, Laws 1959 provided the act should be in effect from and after the date of its passage and approval. Approved March 12, 1959.

CHAPTER 80—THE EXECUTION

Section 94-8019. Western interstate corrections compact—contents.
94-8020. Commitment or transfer of inmate to institution outside of state.
94-8021. Effectuation of purposes of compact.
94-8022. Hearings requested by other states—power of board of pardons and paroles and state department of institutions to hold.
94-8023. Governor—power to enter into contracts.

94-8001. (12087) **Repealed.**

Repeal

This section (Sec. 2240, Pen. C. 1895), relating to execution of judgment other than death, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2301.

94-8002. (12088) **If for fine alone, execution to issue as in civil cases.**

Repeal

This section (Sec. 2241, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2302.

Cross-Reference

Penalty assessments for traffic offenses, sec. 75-5304.

94-8003. (12089) **Judgment of fine and imprisonment, etc.**

Repeal

This section (Sec. 2242, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2302.

Alteration of Judgment

The warden of the state prison has no authority to change or alter a judgment of conviction in any particular. State ex rel. Nelson v. Ellsworth, 141 M 78, 375 P 2d 316, 319.

References

State v. Bogue, 142 M 459, 384 P 2d 749.

94-8004 to 94-8008. (12090 to 12094) **Repealed.**

Repeal

These sections (Secs. 218, 219, p. 250, Bannack Stat.; Sec. 1, p. 56, L. 1885; Secs. 2243 to 2247, Pen. C. 1895; Sec. 1, Ch. 125, L. 1941), relating to judgment of imprisonment and delivery of defendant to the prison, sentence to hard labor, execution upon judgment of death and suspension of judgment of death, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-2301 and 95-2303.

94-8009. (12095) **Insanity of defendant, how determined.**

Repeal

This section (Sec. 224, p. 251, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2304.

References

Cited in Solesbee v. Balkom, 339 U S 29, 94 L Ed 615, 70 S Ct 466 (dissenting opinion).

94-8010 to 94-8018. (12096 to 12100) **Repealed.**

Repeal

These sections (Secs. 220, 222, 225 to 232, pp. 250 to 252, Bannack Stat.), relating to inquisition of insanity of defendant after judgment of death, proceedings where pregnant woman sentenced to death, proceedings where judgment of death in force and not executed, and infliction of punishment of death, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law (see secs. 95-2303 to 95-2307.

94-8019. Western interstate corrections compact—contents. The western interstate corrections compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

1. Purpose and policy. The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

2. Definitions. As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States, the Territory of Hawaii, or, subject to the limitation contained in article VII, Guam.

(b) "Sending state" means a state party to this compact in which conviction was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(e) "Institution" means any prison, reformatory or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

3. Contracts. (a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

4. Procedures and rights. (a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subdivision shall be borne by the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the send-

ing and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

5. Acts not reviewable in receiving state; extradition. (a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

6. Federal aid. Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

7. Entry into force. This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes

of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

8. Withdrawal and termination. This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

9. Other arrangements unaffected. Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

10. Construction and severability. The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 236, L. 1959.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2308.

Title of Act

An act adopting the western interstate corrections compact for the development and execution of a program for the reciprocal confinement, treatment and rehabilitation of certain classes of convicted felons in institutions of participating states; directing cooperation of state agencies in the program; authorizing the holding of hearings requested by agencies of participating states; empowering the governor to enter into contracts under the compact with the approval of the board of examiners; and repealing all acts and parts of acts in conflict herewith; and providing an effective date.

94-8020. Commitment or transfer of inmate to institution outside of state. Any court or state agency having power to commit or transfer an

inmate (as defined in article II (d) of the western interstate corrections compact) to any institution for confinement may commit or transfer such inmate to any institution outside this state if this state has entered into a contract or contracts for the confinement of inmates in said institution pursuant to article III of the western interstate corrections compact.

History: En. Sec. 2, Ch. 236, L. 1959; amd. Sec. 98, Ch. 199, L. 1965.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2309.

Amendment

The 1965 amendment substituted "state agency" for "the board of prison commissioners" near the beginning of the section.

94-8021. Effectuation of purposes of compact. The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the compact.

History: En. Sec. 3, Ch. 236, L. 1959.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2310.

94-8022. Hearings requested by other states—power of board of pardons and paroles and state department of institutions to hold. The board of pardons and paroles and the state department of institutions are hereby authorized and directed to hold such hearings as may be requested by any other party state pursuant to article IV (f) of the western interstate corrections compact.

History: En. Sec. 4, Ch. 236, L. 1959; amd. Sec. 99, Ch. 199, L. 1965.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2311.

Amendment

The 1965 amendment substituted "state department of institutions" for "the board of prison commissioners" near the beginning of the section.

94-8023. Governor—power to enter into contracts. The governor is hereby empowered to enter into such contracts recommended by the department of institutions on behalf of this state as may be appropriate to implement the participation of this state in the western interstate corrections compact pursuant to article III thereof.

History: En. Sec. 5, Ch. 236, L. 1959; amd. Sec. 100, Ch. 199, L. 1965.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2312.

Amendment

The 1965 amendment inserted "recommended by the department of institutions" after "contracts" in the first sentence; and deleted a second sentence, which read: "No such contract shall be of any force or effect until approved by the board of examiners."

Separability Clause

Section 6 of Ch. 236, Laws 1959 read "The provisions of this act shall be severable and if any phrase, clause, sentence, or provision of this act is declared to be unconstitutional or the applicability thereof to any state, agency, person or circumstance is held invalid, the constitutionality of this act and the applicability thereof to any other state, agency, person or circumstance shall, with respect to all severable matters, not be affected thereby."

Repealing Clause

Section 7 of Ch. 236, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 8 of Ch. 236, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 11, 1959.

CHAPTER 81—APPEALS TO SUPREME COURT—WHEN ALLOWED —HOW TAKEN—EFFECT THEREOF

94-8101. (12105) Defendant may appeal from any judgment.

Repeal

This section (Sec. 242, p. 253, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2404.

Appeals from Justice Courts

The Supreme Court does not have appellate jurisdiction to review the judgments or orders of the justice courts of this state. State ex rel. Estes v. Justice Court of Jefferson County, 129 M 136, 284 P 2d 249, 250.

References

Cited or applied in State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437; State v. Frodsham, 139 M 222, 362 P 2d 413, 416.

94-8102. (12106) Repealed.

Repeal

This section (Sec. 2271, Pen. C. 1895), relating to designation of parties on appeal, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2405.

94-8103. (12107) Appeal, when may be taken by the defendant.

Repeal

This section (Sec. 2272, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2404.

Denial of Petition for Writ of Error Coram Nobis

Leave to file an appeal from a denial of petition for a writ of error coram nobis by the district court was denied by the supreme court since no leave to file an appeal is required under the law and if an appeal was available from the district court order, the time therefor had not expired. Brown v. State, 140 M 289, 371 P 2d 262, 263.

Order Denying Petition for Writ of Prohibition

Order of district court denying petition of defendant for writ of prohibition to restrain justice court from further proceedings in criminal action was not a judgment and could not be appealed. State ex rel. Aho v. Justice Court of Laurel Township, 131 M 585, 313 P 2d 542, 543.

References

Cited in State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437; State v. Zumwalt, 129 M 529, 291 P 2d 257, 259; State v. Greeno, 135 M 580, 342 P 2d 1052; State v. Frodsham, 139 M 222, 362 P 2d 413, 416.

94-8104. (12108) In what cases by the state.

Repeal

This section (Sec. 2273, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2403.

Appeals Authorized

An appeal by the state from the order of the court directing the jury to find for the defendant is expressly provided for in this section. State v. Rother, 130 M 357, 303 P 2d 393, 394.

Order Sustaining Demurrer to Complaint

An order sustaining a demurrer to a complaint does not fall within any of the provisions of this section and therefore is not an appealable order. State v. Slater, 130 M 630, 302 P 2d 470.

Right to Appeal Limited by This Section

Where defendant was convicted in justice of peace court and appealed to district court in which court the action was dismissed on defendant's motion, state had no right of appeal under this section. State v. McCluskey, 125 M 20, 229 P 2d 169.

A district court's order of dismissal of the complaint following an appeal from a conviction in a justice of the peace

court does not fail within the provisions of this section and therefore is not an appealable order. State v. Becko, 125 M 76, 230 P 2d 768, 769.

References

Cited or applied in State v. Perez, 126 M 15, 243 P 2d 309, 310; State v. Widdicombe, 130 M 325, 301 P 2d 1116, 1117.

94-8105. (12109) Appeals, time limitation.

Repeal

This section (Sec. 2274, Pen. C. 1895; Sec. 1, Ch. 42, L. 1935) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2405.

Denial of Motion for Mistrial

Part of defendant's appeal claiming that the trial court erred in denying motion of defendant for a mistrial was properly before the supreme court where it was taken within six months after the rendition of the judgment of conviction as prescribed by this section. State v. Tiedemann, 139 M 237, 362 P 2d 529, 530.

Denial of Motion for New Trial

Motion of state to strike defendant's third specification of error, contending that there was no substantial evidence to support the verdict or judgment of conviction, was granted where appeal was not taken within sixty days after the order denying the motion for a new trial. State v. Tiedemann, 139 M 237, 362 P 2d 529, 530.

Excuse for Failure to Take Appeal

In view of the time limit set forth in this section, death of defense counsel nearly a year after the trial and order of commitment was not sufficient showing to justify an original writ of habeas corpus in supreme court. Dryman v. State, 139 M 141, 361 P 2d 959.

Notice of Appeal

Where judgment of conviction had been rendered on October 29, 1959, and defendant did not file his notice of appeal until May 10, 1960, the supreme court lost jurisdiction to entertain the appeal. State v. Frodsham, 139 M 222, 362 P 2d 413, 416.

Operation and Effect

Where person convicted in district court petitioned Supreme Court for writ of mandate to compel district to furnish "copy of trial and court record transcript" for purpose of appeal in forma pauperis, writ was denied where no timely application had been filed in accordance with section 94-8106. State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437.

References

Cited or applied in State v. Zumwalt, 129 M 529, 291 P 2d 257, 259; State v. Kuntz, 130 M 126, 295 P 2d 707, 708; Brown v. State, 140 M 289, 371 P 2d 262.

94-8106. (12110) Appeal, how taken.

Repeal

This section (Sec. 246, p. 254, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2405.

Notice of Appeal

Where district court appointed counsel for the defendant and ordered preparation of the record for an appeal to the supreme court, all at public expense, defendant having had no voice in the choice, in the interest of justice it was incumbent upon the supreme court to consider the contended errors although court-appointed counsel failed to timely file the notice of appeal. State v. Frodsham, 139 M 222, 362 P 2d 413, 418.

Oral Request for Appeal Ineffective

Oral request of intention to appeal made orally in open court fails to conform to this section and is wholly ineffectual to give the Supreme Court jurisdiction. State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437.

References

Brown v. State, 149 M 289, 371 P 2d 262.

94-8107, 94-8108. (12111, 12112) Repealed.

Repeal

These sections (Sec. 247, p. 254, Bannack Stat.; Secs. 2276, 2277, Pen. C. 1895), relating to service of notice by publication and effect of an appeal by the state, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-2405 to 95-2407.

94-8109. (12113) Effect of an appeal by the defendant.

Repeal

This section (Sec. 2278, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2406.

Certificate of Probable Cause

A certificate of probable cause should be granted by the district court whenever the question of whether or not the conviction will be sustained on appeal is fairly debatable. State ex rel. Nelson v. Ellsworth, 141 M 78, 375 P 2d 316, 319.

94-8110, 94-8111. (12114, 12115) Repealed.

Repeal

These sections (Secs. 2279, 2280, Pen. C. 1895), relating to effect of an appeal by the defendant, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2406.

94-8112. (12116) Duty of clerks upon appeal.

Repeal

This section (Sec. 2281, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2405.

Duty of Defense Counsel

Where court-appointed counsel failed to advise the clerk's office as to what would be required for the record on appeal from conviction of burglary and there was no record before the supreme court, defendant had been denied his right to effective representation by counsel on his appeal and the cause was remanded to the district court with directions to revoke appointment of present counsel and appoint a competent and effective counsel to properly prosecute the appeal. State v. Bubnash, 139 M 517, 366 P 2d 155, 158.

94-8113. (12117) Appeal, when tried.

Repeal

This section (Sec. 250, p. 254, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2424.

In General

Where appellant filed his transcript, and subsequently received seven separate orders for extensions of time to file his brief, court would refuse appellant's application to vacate the hearing of the appeal. State v. Cockrell, 130 M 552, 305 P 2d 337, 338.

94-8114. (12118) Repealed.

Repeal

This section (Sec. 251, p. 254, Bannack Stat.), relating to appeal by one defendant, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2429.

CHAPTER 82—DISMISSING APPEALS FOR IRREGULARITY—ARGUMENT ON APPEAL—JUDGMENT ON APPEAL

94-8201 to 94-8206. (12119 to 12124) Repealed.

Repeal

These sections (Sec. 255, p. 255, Bannack Stat.; Secs. 2300 to 2302, 2310 to 2312, Pen. C. 1895), relating to dismissing appeals for irregularity, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-2421 and 95-2425.

94-8207. (12125) Judgment without regard to technical errors.

Repeal

This section (Sec. 254, p. 255, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2425.

Absence of Juror

Failure of a properly notified juror to be present when the jury was impaneled did not invalidate the trial as the defendant had the right only to reject jurors and not to select any particular juror. State v. Moran, 142 M 423, 384 P 2d 777.

Erroneous Instruction

Erroneous instructions are not cause for reversal in the absence of any prejudice. State v. Hay, 120 M 573, 194 P 2d 232, 236.

Failure to Endorse True Names of Witnesses on Indictment

If person has gone to trial under indictment on which witnesses names were designated as Richard Roe and John Doe and convicted, the Supreme Court would be required to sustain the conviction if pos-

sible and burden would be on defendant to show prejudice. State ex rel. Porter v. District Court, 124 M 249, 220 P 2d 1035, 1043.

Prejudice of Defendant

It is up to the supreme court to decide whether an error affects the substantial rights of the defendant, and the defendant must demonstrate prejudice from the record. State v. Straight, 136 M 255, 347 P 2d 482, 488; State v. Bubnash, 142 M 377, 382 P 2d 830.

Prejudice in a criminal case will not be presumed, but rather must appear from the denial or invasion of a substantial right from which the law imputes prejudice. State v. Straight, 136 M 255, 347 P 2d 482, 488; State v. Bubnash, 142 M 377, 382 P 2d 830.

Transcript of Evidence—Necessity

In order to give effect to this section to determine whether the erroneous instructions were merely technical errors, or affected the substantial rights of the accused, it is necessary that the supreme court have before it a transcript of the evidence. State v. Hay, 120 M 573, 194 P 2d 232, 237.

Waiver of Error

References by county attorney as to the nature of the trial, an appeal from justice court, claimed as prejudicial error in the district court, was waived by counsel for defendant when he approved instructions to be given by the court which included reference to justice court proceedings and thereafter obtained deletion from the instructions of the phrase which read "and was found guilty following a jury trial." State v. Gilbert, 139 M 204, 362 P 2d 221, 224.

94-8208. (12125.1) Repealed.

Repeal

This section (Sec. 1, Ch. 136, L. 1931), relating to when it is conclusively deemed on appeal that defendant was present at trial and that court gave proper admonition to the jury, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1904.

94-8209. (12126) What may be reviewed on an appeal, etc.

Repeal

This section (Sec. 2321, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2403.

Denial of Motion for Mistrial

Part of defendant's appeal claiming that the trial court erred in denying motion of defendant for a mistrial was properly before the supreme court where it was taken within six months after the rendition of the judgment of conviction as prescribed by section 94-8105. State v. Tiedemann, 139 M 237, 362 P 2d 529, 530.

References

Cited in State v. Davis, 141 M 197, 376 P 2d 727, 729.

94-8210. (12127) May reverse, affirm or modify the judgment and order, etc.

Repeal

This section (Sec. 403, p. 250, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-2426 and 95-2427.

Operation and Effect

Where Supreme Court reversed conviction of defendant and remanded cause to district court with directions that if defendant have a new trial the district court should first make inquiry into the defendant's insanity but if the prosecution is dismissed that the district court deliver the defendant to the court of another county which has continuing jurisdiction over the defendant so that the latter court may inquire into his mental condition and make such disposition of the defendant as is required by law; and thereafter the prosecution was dismissed, the trial court then was compelled to deliver the defendant to the other district court and county attorney could not file a new information. The trial court was bound to follow the mandate of the Supreme Court as found in the remittitur and mandamus will lie to require that the district court follow such mandate. State ex rel. Kitchens v. District Court, 130 M 57, 294 P 2d 907. (Dissenting opinion, 130 M 57, 294 P 2d 907, 911.)

Reduction of Sentence

The sentence of a defendant, who pleaded guilty to grand larceny, to four years in the state prison, pursuant to section 94-2706, was reduced to one year by the supreme court where trial court passed sentence upon receipt of private reports without allowing defendant or his counsel to learn of the representations in the reports and a hearing to present evidence to refute such representations as pro-

vided in sections 94-7813 and 94-7814. Kuhl v. District Court, 139 M 536, 366 P 2d 347, 365.

References

Cited in State v. Brown, 136 M 482, 351 P 2d 219, 222.

94-8211 to 94-8214. (12128 to 12131) Repealed.

Repeal

These sections (Sec. 256, p. 255, Bannack Stat.; Secs. 2323 to 2326, Pen. C. 1895), relating to where new trial to be had, discharge of defendant on reversal, execution of judgment on affirmance, and entering and remitting judgment of appellate court, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-2411, 95-2427 and 95-2430.

94-8215. (12132) Jurisdiction ceases after judgment remitted.

Repeal

This section (Sec. 2327, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2427.

Operation and Effect

Where Supreme Court reversed conviction and the remittitur went down in due course and was filed with the lower court, the Supreme Court at that time lost jurisdiction in the case. Specifically it lost any jurisdiction it may have had theretofore to alter in any particular either the opinion or the mandate which followed upon that opinion, certainly unless the remittitur were first recalled. State ex rel. Kitchens v. District Court, 130 M 57, 294 P 2d 907, 908.

CHAPTER 83—IN WHAT CASES DEFENDANT MAY BE ADMITTED TO BAIL

94-8301. (12133) Admission to bail defined.

Repeal

This section (Sec. 236, p. 126, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1123.

Collateral References

Mandamus to compel judge or other officer to grant accused bail or to accept proffered sureties. 23 ALR 2d 803.

Failure to appear, and the like, resulting in forfeiture or conditional forfeiture of bail, as affecting right to second admission to bail in same noncapital criminal case. 29 ALR 2d 945.

94-8302. (12134) Repealed.

Repeal

This section (Sec. 237, p. 226, Cod. Stat. 1871), relating to definition of taking of bail, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1123.

94-8303. (12135) Offense not bailable.

Repeal

This section (Secs. 112 to 238, pp. 207 to 227, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1108.

Discretion of Trial Court

Bail is a matter within the discretion of the trial court and its ruling will not be disturbed unless a clear abuse of discretion appears. State v. London, 131 M 410, 310 P 2d 571, 580.

Denial of bail could not be claimed as showing prejudice by the trial judge for such is a mere preliminary matter and has nothing to do with the trial on the merits. State v. London, 131 M 410, 310 P 2d 571, 580.

94-8304. (12136) Repealed.

Repeal

This section (Secs. 112 to 238, pp. 207 to 227, Cod. Stat. 1871), relating to when defendant admitted to bail before conviction, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1108.

94-8305. (12137) When admitted to bail after conviction, etc.

Repeal

This section (Sec. 241, p. 227, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1109.

Abuse of Discretion

District court did not abuse its discretion when it refused to fix bail on appeal of defendant sentenced to state prison. Bubnash v. State, 139 M 639, 366 P 2d 867.

94-8306, 94-8307. (12138, 12139) Repealed.

Repeal

These sections (Secs. 240, 242, 243, p. 227, Cod. Stat. 1871), relating to nature of bail and notice of application when bail a matter of discretion, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1111 and 95-1118.

CHAPTER 84—BAIL ON BEING HELD TO ANSWER BEFORE INFORMATION

(Repealed—Section 2, Chapter 196, Laws of 1967)

94-8401 to 94-8405. (12140 to 12144) Repealed.

Repeal

These sections (Secs. 239, 244 to 246, pp. 227, 228, Cod. Stat. 1871; Secs. 2350 to 2354, Pen. C. 1895), relating to bail on being held to answer upon an examination for a public offense, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1102, 95-1113, 95-1114 and 95-1123.

CHAPTER 85—BAIL ON INDICTMENT OR INFORMATION BEFORE CONVICTION

Section 94-8508. Sureties for guaranteed arrest bond certificates—filing of undertaking —guaranteed arrest bond certificate.
94-8509. Violations of motor vehicle laws—posting of guaranteed arrest bond certificate in lieu of cash.
94-8510. Certification of names of sureties—withdrawal by surety company.

94-8501. (12145) When the offense is not capital.

Repeal

This section (Sec. 2360, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1102 to 95-1104.

Collateral References

Discharge, suspension, or remission of bail by reason of imprisonment of principal for a different offense. 4 ALR 2d 443.

94-8502 to 94-8505. (12146 to 12148) Repealed.

Repeal

These sections (Secs. 2361 to 2364, Pen. C. 1895), relating to bail on indictment or information before conviction, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-602 and 95-1123.

94-8506. (12150) Sections applicable to qualifications, etc.

Repeal

This section (Sec. 2365, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1123.

Amount of Bail

Court did not err in refusing defendant's motion to reduce bail which was initially set at $25,000, where the person assaulted was in a very precarious condition and it was not known whether he would live or die. When the judge was advised that the victim would probably live, he reduced the bail to $7,500 which was a very reasonable amount. State v. McLeod, 131 M 478, 311 P 2d 400, 407, 408.

The amount of bail which the judge may fix is within his sound legal discretion, and is always to be a reasonable amount. State v. McLeod, 131 M 478, 311 P 2d 400, 407.

The trial judge in determining the amount of bail to be fixed, should take into consideration the enormity of the crime charged; the maximum penalty which the law authorizes; the pecuniary condition of the defendant; the probability of

the defendant's flight to avoid punishment; his general character and reputation; the apparent nature and strength of the proof as bearing upon the probability of his conviction; and other matters bearing upon the particular case. State v. McLeod, 131 M 478, 311 P 2d 400, 407.

94-8507. (12151) **Repealed.**

Repeal

This section (Sec. 2366, Pen. C. 1895), relating to increase or reduction of bail upon indictment or information, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1111.

94-8508. Sureties for guaranteed arrest bond certificates—filing of undertaking—guaranteed arrest bond certificate. (A) Any domestic or foreign surety company which has qualified to transact surety business in this state may, in any year, become surety in an amount not to exceed one hundred dollars ($100.00) with respect to any guaranteed arrest bond certificates issued in such year by an automobile club or association or by an insurance company authorized to write automobile liability insurance within this state, by filing with the commissioner of insurance an undertaking thus to become surety.

(B) Such undertaking shall be in form to be prescribed by the commissioner and shall state the following:

(1) The name and address of the automobile club or clubs, automobile association, or insurance company or companies, or associations with respect to the guaranteed arrest bond certificates of which the surety company undertakes to be surety.

(2) The unqualified obligation of the surety company to pay the fine or forfeiture in an amount not to exceed one hundred dollars ($100.00) of any person who, after posting a guaranteed arrest bond certificate with respect to which the surety company has undertaken to be surety, fails to make the appearance to guarantee which the guaranteed arrest bond certificate was posted.

(C) The term, guaranteed arrest bond certificate, means any printed card or other certificate issued by an automobile club, association or insurance company, to any of its members or insureds, which said card or certificate is signed by such member or insured and contains a printed statement that such automobile club, association or insurance company and a surety company, or an insurance company authorized to transact both automobile liability insurance and surety business in the state of Montana, guarantee the appearance of the person whose signature appears on the card or certificate and that they will, in the event of failure of such person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed one hundred dollars ($100.00).

History: En. Sec. 1, Ch. 39, L. 1957.

Title of Act

An act authorizing qualified surety companies to become surety with respect to guaranteed arrest bond certificates of automobile clubs and associations and insurance companies authorized to write automobile liability insurance within the state of Montana, and requiring the acceptance of such certificates in lieu of cash or property bail in the event of certain violations of motor vehicle laws; providing that all acts and parts of acts in conflict herewith are repealed.

Cross-References

Sureties for guaranteed arrest bond certificates, filing of undertaking, definition of guaranteed arrest bond certificate, sec. 95-1121.

94-8509. Violations of motor vehicle laws—posting of guaranteed arrest bond certificate in lieu of cash. Any guaranteed arrest bond certificate with respect to which a surety company has become surety or a guaranteed arrest bond certificate issued by an insurance company authorized to transact both automobile liability insurance and surety business within this state, as provided in section 1 [94-8508] hereof, shall, when posted by the person whose signature appears thereon, be accepted in lieu of cash bail in an amount not to exceed one hundred dollars ($100.00), as a bail bond to guarantee the appearance of such person, in any court, including municipal courts, in this state, at such time as may be required by the court, when such person is arrested for violation of any motor vehicle law of this state or ordinance of any municipality in this state (except for the offense of driving while intoxicated or for any felony) committed prior to the date of expiration shown on such guaranteed arrest bond certificate so posted as a bail bond in any court in this state shall be subject to the forfeiture and enforcement provisions with respect to bail bonds posted in criminal cases as provided by law, and that any such guaranteed arrest bond certificate posted as bail bond in any municipal court in this state shall be subject to the forfeiture and enforcement provisions of the chapter or ordinance of the particular municipality pertaining to bail bonds posted.

History: En. Sec. 2, Ch. 39, L. 1957.

Cross-References

Violations of motor vehicle laws, posting of guaranteed arrest bond certificates in lieu of cash, sec. 95-1122.

94-8510. Certification of names of sureties—withdrawal by surety company. The commissioner of insurance shall certify to each justice of the peace, police magistrate and district judge the names of surety companies who have become sureties with respect to guaranteed arrest bond certificates, and shall likewise immediately notify such official upon the withdrawal of such company as surety. No such withdrawal by any company shall be effective for thirty (30) days after the filing thereof with the state insurance commissioner.

History: En. Sec. 3, Ch. 39, L. 1957.

Repealing Clause

Section 4 of Ch. 39, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Cross-References

Certification of names of sureties, withdrawal by surety company, sec. 95-1123.

CHAPTER 86—BAIL ON APPEAL—DEPOSIT IN LIEU OF BAIL

(Repealed—Section 2, Chapter 196, Laws of 1967)

94-8601 to 94-8605. (12152 to 12156) **Repealed.**

Repeal

These sections (Sec. 118, p. 235, Bannack Stat.; Secs. 2370, 2371, 2380 to 2382, Pen. C. 1895), relating to bail on appeal and deposit in lieu of bail, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1102, 95-1112 and 95-1123.

CHAPTER 87—SURRENDER OF DEFENDENT—FORFEITURE OF BAIL—RECOMMITMENT OF DEFENDANT

Section 94-8704. How forfeited and how forfeiture discharged.

94-8701 to 94-8703. (12157 to 12159) **Repealed.**

Repeal

These sections (Secs. 2390 to 2391, Pen. C. 1895), relating to surrender of defendant under bail, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1115.

94-8704. (12160) **How forfeited and how forfeiture discharged.** (1) Before a bail undertaken or deposit is forfeited, it shall be shown that the bondsman or surety was mailed notice seventy-two (72) hours before the time of required appearance of the defendant unless the time of required appearance was within seventy-two (72) hours from the time of arrest or unless a specific time of appearance was stated on the face of the bond, citation or summons.

(2) If, without sufficient excuse, the defendant neglects to appear for arraignment or for trial or judgment, or upon any other occasion when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes, and the undertaking of bail, or the money deposited instead of bail, as the case may be, is thereupon forfeited. But if at any time before the final adjournment of the court, the defendant or his bail appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking, or the deposit to be discharged upon such terms as may be just.

History: Ap. p. Sec. 124, p. 236, Bannack Stat.; re-en. Sec. 255, p. 229, Cod. Stat. 1871; re-en. Sec. 255, 3d Div. Rev. Stat. 1879; re-en. Sec. 256, 3d Div. Comp. Stat. 1887; en. Sec. 2400, Pen. C. 1895; re-en. Sec. 9467, Rev. C. 1907; re-en. Sec. 12160, R. C. M. 1921; amd. Sec. 1, Ch. 181, L. 1965. Cal. Pen. C. Sec. 1305.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1116.

Amendment

The 1965 amendment inserted a new subsection (1) and designated the previous text as subsection (2).

94-8705. (12161) **Default of person under bail.**

Repeal

This section (Sec. 2401, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1116.

Cross-Reference

Penalty assessment on forfeiture of bail for traffic offenses, sec. 75-5304.

94-8706 to 94-8718. (12162 to 12174) **Repealed.**

Repeal

These sections (Secs. 263 to 268, p. 230, Cod. Stat. 1871; Sec. 1, p. 45, L. 1873; Secs. 2402 to 2406, 2420 to 2427, Pen. C. 1895), relating to default of person under bail and arrest and recommitment of defendant, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1102, 95-1107, 95-1115, 95-1117 and 95-1123.

CHAPTER 88—WHO MAY BE WITNESSES IN CRIMINAL ACTIONS

94-8801. (12175) **Who are competent witnesses.**

References

State v. Barick, 143 M 273, 389 P 2d 170.

94-8802. (12176) **Competency of husband and wife as witnesses.**

Operation and Effect

It was error to permit wife to testify against husband in trial for assault by unlawfully threatening another by pointing a loaded revolver in violation of subd. 4 of section 94-602 where no offense against the wife was charged. State v. Storm, 124 M 102, 220 P 2d 674, 675.

94-8803. (12177) When the defendant is not a competent witness, etc.

Privilege against Self Incrimination

In a prosecution for grand larceny, an instruction which had the effect of placing a burden on the defendant to explain his possession of stolen property was erroneous. Such a burden deprives defendant of his cloak of innocence and forces him to testify. The cases of State v. Sparks, 40 M 82, 105 P 87 and State v. Willette, 46 M 326, 127 P 1013, to the extent they impose a burden to explain or testify concerning any charge of possessing stolen goods are overruled. State v. Greeno, 135 M 580, 342 P 2d 1052.

References

Cited or applied in State v. Dillon, 125 M 24, 230 P 2d 764, 767; State v. London, 131 M 410, 310 P 2d 571, 585; State v. Barick, 143 M 273, 389 P 2d 170.

94-8804. (12178) Testimony of several persons concerned, etc.

Testimony of Accomplice

An accomplice may testify in a criminal case even though he is a convicted felon at the time of his testimony. State v. Barick, 143 M 273, 389 P 2d 170.

CHAPTER 89—COMPELLING ATTENDANCE OF WITNESSES—SUBPOENAS

94-8901. (12179) Subpoena defined and who may issue.

Repeal

This section (Sec. 2460, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1801.

References

State v. Lagge, 143 M 289, 388 P 2d 792.

94-8902. (12180) Form of subpoena.

Repeal

This section (Sec. 2461, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1801.

References

State v. Lagge, 143 M 289, 388 P 2d 792.

94-8903. (12181) Repealed.

Repeal

This section (Sec. 2462, Pen. C. 1895), relating to subpoenas for witnesses and by whom and how served, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see 95-1801.

94-8904. (4945) Criminal actions not more than six to be subpoenaed, etc.

Repeal

This section (Sec. 4656, Pol. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1801.

Operation and Effect

This statute is to control the expenses of the county and is a limitation upon the clerk of the court and not upon the judge. Where the court allows more than six witnesses to testify for the state the defendant is not prejudiced by the absence of an express order made by the court. State v. Cockrell, 131 M 254, 309 P 2d 316, 321.

94-8905 to 94-8909. (12182 to 12186) Repealed.

Repeal

These sections (Secs. 2463 to 2467, Pen. C. 1895), relating to expenses of witness from without the county or poor, attendance of witness residing or served out of the county, disobedience to subpoena, failure to appear and imprisoned witnesses, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1801.

CHAPTER 90—WITNESSES FROM WITHOUT STATE—HOW SECURED IN CRIMINAL PROCEEDINGS

Section 94-9003. Witness from another state summoned to testify in this state.

94-9001. "Witness" and "state" defined.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Act to Secure the Attendance of Witnesses from without a State in Criminal Proceedings: Alaska, District of Columbia, Illinois, Kansas, Kentucky, Missouri, New Mexico, Oklahoma, Panama Canal Zone, South Carolina, Texas, and Virgin Islands.

Cross-References

Production and suppression of evidence, Title 95, ch. 18.

94-9003. Witness from another state summoned to testify in this state. (1) If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation, which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. This certificate will be presented to a judge of a court of record in the county in which the witness is found.

(2) If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state, such judge may direct that such witness be forthwith brought before him; and the judge being satisfied of the desirability of such custody and delivery, for which such determination said certificate shall be prima facie proof, may order that said witness be forthwith taken into custody and delivered to an officer of this state, which order shall be sufficient authority to such officer to take such witness into custody and hold him unless and until he may be released by bail, recognizance, or order of the judge issuing the certificate.

(3) If the witness is summoned to attend and testify in this state, he shall be tendered the sum of ten cents (10¢) a mile for each mile and five dollars ($5.00) for each day that he is required to travel and attend as a witness, provided further that in those cases in which the state wherein the witness is found has by statutory enactment required that the summoned witness be paid an amount or amounts in excess of the amount hereinbefore in this paragraph provided, then said witness may be tendered said amount or amounts so required by said state to be tendered though the said amount or amounts so required to be tendered are in excess of the said amounts in this paragraph provided for. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

History: En. Sec. 3, Ch. 188, L. 1937; amd. Sec. 1, Ch. 117, L. 1949.

Amendment

The 1949 amendment added the proviso to the first sentence of paragraph (3).

Repealing Clause

Section 2 of Ch. 117, Laws 1949 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 117, Laws 1949 provided the act should be in effect from and after its passage and approval. Approved February 25, 1949.

CHAPTER 91—EXAMINATION OF WITNESSES CONDITIONALLY

(Repealed—Section 2, Chapter 196, Laws of 1967)

94-9101 to 94-9112. (12187 to 12198) Repealed.

Repeal

These sections (Secs. 2480 to 2491, Pen. C. 1895; Sec. 1, Ch. 109, L. 1907), relating to examination of witnesses conditionally, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1802.

CHAPTER 92—EXAMINATION OF WITNESSES ON COMMISSION

94-9201. (12199) Examination of witness residing out of the state.

Cross-References

Production and suppression of evidence, Title 95, ch. 18.

CHAPTER 93—PROCEEDINGS ON INQUIRY AS TO SANITY OF A DEFENDANT

94-9301. (12213) Insane person cannot be tried or punished.

Repeal

This section (Sec. 2520, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-504.

Declaratory of Common Law

This statute is declaratory of the common law as it has existed at least since Blackstone's day. Comparable or similar statutes have been enacted in all but four states of the Union. In these four, it seems the common law without the aid of statute remains in force. State v. Kitchens, 129 M 331, 286 P 2d 1079, 1083.

94-9302. (12214) Doubts as to sanity of defendant, how determined, etc.

Repeal

This section (Sec. 2521, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-506 and 95-507.

Construction

A doubt within the meaning of this section may come from matters which are brought to the attention of the trial judge wholly beyond the common-law record or which although occurring at the trial do not appear in the record, or which although shown in the record are not admissible as evidence bearing upon any issue before the trial court on the merits. The sources of that doubt need not be evidence. It is enough that the doubt comprehended by the statute arises from credible and trustworthy information brought to the attention of the trial court from any source at all. State v. Kitchens, 129 M 331, 286 P 2d 1079, 1083.

The question whether such a doubt is raised in any given case addresses itself directly to the sound judicial discretion of the trial court. But like any other matter thus committed to the discretion of a court or its judge this discretion may not be exercised arbitrarily. Its abuse will be reviewed on appeal, and where an abuse does appear the reviewing court will say as a matter of law a doubt did arise which commanded action, and which therefore works a reversal for the error of the judge below in failing to heed its command. State v. Kitchens, 129 M 331, 286 P 2d 1079, 1083.

The weight of successive adjudications by four different courts and judges, in other proceedings, that the defendant was insane, were sufficient as a matter of law to raise the doubt required by this section. The testimony of a witness that the defendant was sane does not alter the case, for at this stage of the proceedings the court is only concerned with the preliminary question whether there is reason to doubt the defendant's sanity. State v. Kitchens, 129 M 331, 286 P 2d 1079, 1085.

References

Cited or applied in State ex rel. Kitchens v. District Court, 130 M 57, 294 P 2d 907, 908; Petition of Jones, 143 M 19, 386 P 2d 747.

94-9303. (12215) Trial of the question of insanity—charge of court.

Repeal

This section (Sec. 2522, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-506.

Collateral References

Presumption of continuing insanity as applied to accused in criminal case. 27 ALR 2d 121.

94-9304 to 94-9307. (12216 to 12219) Repealed.

Repeal

These sections (Secs. 2523 to 2526, Pen. C. 1895), relating to verdict of jury as to sanity, exoneration of bail on commitment of defendant, detention of defendant in asylum, and expense of sending defendant to asylum, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-505, 95-506 and 95-1116.

CHAPTER 94—COMPROMISING OFFENSES BY LEAVE OF COURT

94-9401. (12220) Compromise of offense for which civil action, etc.

Repeal

This section (Sec. 2540, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968.

References

State v. Johnston, 140 M 111, 367 P 2d 891, 893.

94-9402. (12221) Compromise by permission of the court, etc.

Repeal

This section (Sec. 2541, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968.

References

State v. Johnston, 140 M 111, 367 P 2d 891, 893.

94-9403. (12222) No public offense to be compromised except.

Repeal

This section (Sec. 2542, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968.

Restitution

Where one is charged with uttering and delivering a fictitious check in violation of section 94-2007 restitution is no defense. State v. Johnston, 140 M 111, 367 P 2d 891, 893.

CHAPTER 95—DISMISSAL OF ACTIONS FOR WANT OF PROSECUTION OR OTHER REASONS

94-9501. (12223) When action may be dismissed.

Repeal

This section (Sec. 179, p. 244, Bannack Stat.) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1703.

Dismissal on Other Grounds

Where district court dismissed information on grounds other than that provided by this section and record failed to show whether this ground was urged at the hearing in the district court or any ruling thereon, the case was reversed and the cause remanded to the district court for further proceedings not inconsistent with the opinion of the Supreme Court. State v. Saginaw, 124 M 225, 220 P 2d 1021, 1025; State v. McRae, 124 M 238, 220 P 2d 1025, 1027, distinguished in 130 M 299, 301, 300 P 2d 952, 953.

Interruption of Period

From the six months mentioned in subdivision 2 of this section must be excluded the time elapsing between the date the demurrer to the information was erroneously sustained and the date of the remittitur of the Supreme Court reversing the decision. State v. Israel, 124 M 152, 220 P 2d 1003, 1013.

Operation and Effect

Whether or not motion to dismiss information under this section because of delay in trial should be granted or denied depends on whether or not "good cause" is shown for delay. State v. Saginaw, 124 M 225, 220 P 2d 1021, 1025; State v. McRae, 124 M 238, 220 P 2d 1025, 1027, distinguished in 130 M 299, 301, 300 P 2d 952, 953.

In a prosecution for a misdemeanor, where the complaint is dismissed upon request by the state so that a new complaint may be issued which is substantially the same as the first complaint but amends it as to the time the offense was committed, such dismissal is not one under this section which would be a bar to the prosecution under section 94-9507. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 859, 860, 861, distinguished in 130 M 299, 302, 300 P 2d 952, 953.

References

Cited or applied in State v. Porter, 130 M 299, 300 P 2d 952, 953; State ex rel. Keast v. District Court, 135 M 62, 336 P 2d 699, 700.

94-9502. (12224) Case may be continued.

Repeal

This section (Sec. 2551, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 2, 1968. For new law, see secs. 95-602 and 95-1708.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 861; State v. Porter, 130 M 299, 300 P 2d 952, 953.

94-9503, 94-9504. (12225, 12226) Repealed.

Repeal

These sections (Secs. 2552, 2553, Pen. C. 1895), relating to continuance of action and discharge from custody and discharge of defendant on dismissal of action, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1102, 95-1706 and 95-1708.

94-9505. (12227) Dismissed on motion of court or application, etc.

Repeal

This section (Sec. 2554, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1703.

References

Cited or applied in State v. Storm, 127 M 414, 265 P 2d 971, 973; State v. Piveral, 127 M 427, 265 P 2d 969, 970.

94-9506. (12228) Repealed.

Repeal

This section (Sec. 2555, Pen. C. 1895), relating to abolishment of nolle prosequi, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1303.

94-9507. (12229) Dismissal a bar in misdemeanor, but not in felony.

Repeal

This section (Sec. 2556, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1703.

Bar—How Raised

The defense of the bar arising under this section may properly be raised by a plea of not guilty, and all matters in proof thereof are admissible under the plea of not guilty by virtue of section 94-6805. State v. Porter, 130 M 299, 300 P 2d 952, 954.

Dismissal on Demurrer

Defendant charged with sale of intoxicating liquor to a minor was not placed in former jeopardy in violation of section 18, article III, of the Montana Constitution, by a dismissal of the complaint upon his demurrer in justice court without any further proceedings. State v. Moore, 138 M 379, 357 P 2d 346, 347.

Information or Indictment Required for Bar

This section applies only to offenses where there is a filing of an information or the finding of an indictment. State v. Moore, 138 M 379, 357 P 2d 346, 347.

Operation and Effect

This section applies only to orders of dismissal as provided in section 94-9501. Therefore, in a justice of the peace proceeding where a complaint is dismissed upon request by the state so that a new complaint may be issued which is substantially the same as the first complaint but amends it as to the time the offense was committed, such dismissal is not a

bar to the prosecution for the misdemeanor. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 857, 859 to 861, distinguished in 130 M 299, 302, 300 P 2d 952, 953 and in 138 M 379, 381, 357 P 2d 346.

Release on Habeas Corpus

Where the person accused of a felony has been released on a habeas corpus under the provisions of section 94-9501, the county attorney is within his rights to ask leave to file a new information charging the same offense. State ex rel. Keast v. District Court, 135 M 62, 336 P 2d 699.

References

Cited or applied in State ex rel. Treat v. District Court, 122 M 249, 200 P 2d 248, 250.

CHAPTER 96—PROCEEDINGS AGAINST CORPORATIONS

(Repealed—Section 2, Chapter 196, Laws of 1967)

94-9601 to 94-9610. (12230 to 12239) Repealed.

Repeal

These sections (Secs. 470, 471, 3d Div. Comp. Stat. 1887; Secs. 2570 to 2579, Pen. C. 1895), relating to proceedings against corporations, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-615.

CHAPTER 97—DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED

(Repealed—Section 2, Chapter 196, Laws of 1967)

94-9701 to 94-9707. (12240 to 12246) Repealed.

Repeal

These sections (Secs. 2610 to 2616, Pen. C. 1895), relating to disposal of property stolen or embezzled, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-714 and 95-716.

CHAPTER 98—PROBATION, PAROLE AND CLEMENCY

Section 94-9821. Act, how cited.
94-9822. Board of pardons—organization.
94-9823. Definitions.
94-9824. Seal, orders, records, annual report.
94-9825. Director and employees—salaries to be paid monthly—approval and auditing.
94-9826. Expenses to be paid.
94-9827. Legal adviser of the board.
94-9828. Duties of the director.
94-9829. Duties of probation and parole officers.
94-9830. Conditions of probation or suspension of sentence.
94-9831. Arrest—subsequent disposition.
94-9832. Parole authority and procedure.
94-9833. Conditional release.
94-9834. Information from prison officials.
94-9835. Persons may be heard—counsel.
94-9836. Subpoenas.
94-9837. Rules.
94-9838. Return of parole violator.
94-9839. Service of term for additional crime.
94-9840. Discharge of prisoner, parolee or conditional releasee.
94-9841. Cases of executive clemency.
94-9842. Notice of hearing applications for executive clemency.
94-9843. Publication of order.
94-9844. Proof of publication.
94-9845. Record of meeting, what to contain.
94-9846. When publication not necessary.
94-9847. Decision to be made.
94-9848. Governor may respite.
94-9849. Governor to report to legislative assembly.

94-9850. Cases of juveniles excluded.
94-9851. Effective date—application to persons presently on parole or probation or eligible for.

94-9801 to 94-9820. (12247 to 12266) Repealed.

Repeal

These sections (Secs. 2630 to 2646, Pen. C. 1895; Secs. 3 to 6, 8 to 12, p. 192, L. 1891; and Secs. 1 to 3, Ch. 95, L. 1907), relating to pardons and paroles, were repealed by Sec. 31, Ch. 153, Laws 1955. For new provisions, see secs. 94-9821 to 94 9851.

94-9821. Act, how cited. This act shall be known and may be cited as the "Probation, Parole and Executive Clemency Act."

History: En. Sec. 1, Ch. 153, L. 1955.

Title of Act

An act creating a board of pardons and prescribing the appointment and composition thereof, with power and duty to grant paroles, within restrictions, to supervise probations and suspended sentences, to recommend after duly noticed public hearing that the governor remit fines and forfeitures, grant pardons, absolute or conditional; grant commutations of punishments after conviction and judgment for offenses committed against the criminal laws of this state; providing for a director and a staff to administer the provisions of this act, and defining their duties; requiring records of board proceedings; providing for arrest of parolees or probationers upon violation of conditions of release; providing penalties for parole or probation violators; defining rights of attorneys to hearing before the board; providing the board with power to subpoena witnesses, and make rules and regulations under the provisions of this act; defining governor's power to respite; requiring governor to report acts of executive clemency to the legislative assembly; excluding juveniles; providing a saving clause; repealing sections 94-9801, 94-9802, 94-9803, 94-9804, 94-9805, 94-9806, 94-9807, 94-9808, 94-9809, 94-9810, 94-9811, 94-9812, 94-9813, 94-9814, 94-9815, 94-9816, 94-9817, 94-9818, 94-9819 and 94-9820, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith; and providing an effective date clause.

Good Time Allowance

Under the "new parole laws" (sections 94-9821 to 94-9851) a prisoner retains the right to earn good time under the old good time statutes (sections 80-739, 80-741, repealed by Laws 1955, ch. 117, sec. 2 and section 80-740) and he is subject to forfeiture of this good time. Hill v. State, 139 M 407, 365 P 2d 44, 46, 95 ALR 2d 1261.

The "new parole laws" (sections 94-9821 to 94-9851) have nothing to do with the forfeiture of earning of good time. Hill v. State, 139 M 407, 365 P 2d 44, 46, 95 ALR 2d 1261.

94-9822. Board of pardons—organization. There is hereby created a state board of pardons, hereinafter referred to as the "board," consisting of three (3) members who shall be appointed by the governor with the advice and consent of the senate. The board shall administer the executive clemency, probation and parole system, and shall endeavor to secure the effective application and improvement of such system and the laws upon which it is based. The members of the board shall serve on a per diem basis and shall be paid at the rate of fifteen dollars ($15.00) per day of service, plus actual and necessary expenses, and shall meet at least once each month at the state prison. The members of the board shall serve for terms of six (6) years, and until their successors are duly appointed and qualified, provided, however, that two (2) of those first appointed after this act takes effect, shall serve for terms of two (2) and four (4) years, respectively. The governor shall appoint the members of the board and call a meeting thereof within thirty (30) days of the effective date thereof. The board shall immediately thereafter set up the system herein provided for, and make the necessary appointments of its director, and other employees. Suitable quarters, supplies and equipment shall be provided.

The principal office of the board shall be in Deer Lodge, Montana. A vacancy occurring before the expiration of any member's term of office shall be filled in the same manner for the unexpired portion of said term. The governor may at any time, after notice and hearing, remove any member for neglect of duty, malfeasance, misfeasance or nonfeasance in office.

History: En. Sec. 2, Ch. 153, L. 1955.

Powers of Board

The power of the state board of pardons is limited to permitting a convict to leave the enclosure of the state prison after he has served a period of confinement fixed for him by the board in accordance with section 94-9833. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 555.

Neither section 94-9832 nor any other section in the code gives the state board of pardons power to extinguish a former sentence by paroling a man to a subsequent sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 555.

Maximum sentences cannot be changed or altered by the state board of pardons. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 555.

The state board of pardons does not have the right to pardon or commute a sentence as the exclusive power to pardon and commute a sentence rests in the office of the governor under Art. VII, sec. 9 of the Montana Constitution. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 555.

94-9823. Definitions. When used in this act, unless the context otherwise requires:

(a) "Probation" is the release by the court without imprisonment except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the board upon direction of the court.

(b) "Parole" is the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to its supervision.

(c) "Executive clemency" refers to the powers of the governor as provided by section 9 of Article VII of the Constitution of the state of Montana.

History: En. Sec. 3, Ch. 153, L. 1955.

Effect of Granting of a Parole

A parole releases from confinement a convict who has been committed to an institution, before the expiration of his sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 555.

The granting of a parole to an escape sentence by virtue of the wording of section 94-4203 did not result in a discharge of the original sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 557.

References

In re Kane's Petition, 145 M 516, 402 P 2d 403.

94-9824. Seal, orders, records, annual report. The board shall adopt an official seal of which the courts shall take judicial notice. A majority of the board shall constitute a quroum. Decision of the board may be by majority vote. The orders of the board shall not be reviewable except as to compliance of terms of this act. The board shall keep a record of its acts and decisions available to the public, providing, however, that all social records, including the pre-sentence report, the pre-parole report and the supervision history obtained in the discharge of official duty by any member or employee of the board, shall be confidential and shall not be disclosed directly or indirectly to anyone other than the members of the board or a judge; provided, however, that the board or a court may in its discretion, whenever the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the inspection

of the report or any parts thereof by the prisoner or his attorney. At the close of each fiscal year the board shall submit to the governor, to the board of prison commissioners and to the legislature, a report with statistical data of its work, including research studies which it may make of probation, sentencing, parole or related functions, and a compilation and analysis of dispositions by criminal courts throughout the state.

History: En. Sec. 4, Ch. 153, L. 1955.

94-9825. Director and employees—salaries to be paid monthly—approval and auditing. The board shall appoint a state director of probation and parole, hereinafter referred to as the "director" who shall appoint, with the approval of the board, an assistant director, probation and parole officers and other employees required to administer the provisions of this act. The director shall receive an annual salary in such amount as may be specified by the legislative assembly in the appropriation to the board of pardons payable monthly, which shall include compensation for all services rendered as interstate compact administrator. If the legislative assembly does not specify the maximum salary of the state director in the appropriation to the board of pardons, it shall be fixed by the board after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. All other officers and employees of the board shall receive such compensation for their services as may be fixed by the board. All officers and employees of the board shall hold office at the pleasure of the board and shall perform such duties as are imposed on them by law or by the board.

The salaries of all officers and employees of the board shall be paid monthly after such salaries have been approved by the board upon claims therefor.

History: En. Sec. 5, Ch. 153, L. 1955; amd. Sec. 1, Ch. 122, L. 1957; amd. Sec. 11, Ch. 97, L. 1961; amd. Sec. 10, Ch. 225, L. 1963; amd. Sec. 16, Ch. 237, L. 1967.

Amendments

The 1957 amendment raised the salary of the director from $6,000 to $7,000 per annum.

The 1961 amendment deleted from the end of the section the words "to be audited and approved by the state board of examiners."

The 1963 amendment substituted the provision for a maximum salary of $8,400 for the director for a provision fixing the salary at $7,000; and added to the second sentence the words "which shall include compensation for all services rendered as interstate compact administrator."

The 1967 amendment substituted "in such amount * * * to the board of pardons" for "of not more than eight thousand four hundred dollars ($8,400) per annum" in the second sentence; and inserted the third and fourth sentences.

Repealing Clause

Section 2 of Ch. 122, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 122, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 5, 1957.

Section 11 of Ch. 225, Laws 1963 read "This act shall be effective from and after February 28, 1963."

94-9826. Expenses to be paid. All expenses incurred by the board pursuant to the provisions of this act, including the actual and necessary traveling and other expenses and disbursements of the members thereof, its officers and employees, incurred while on business of the board either within or without the state, shall, unless otherwise provided in this act,

be paid from funds appropriated, after being approved by the board upon claims therefor.

History: En. Sec. 6, Ch. 153, L. 1955; amd. Sec. 12, Ch. 97, L. 1961.

Amendment

The 1961 amendment deleted from the end of the section the words "to be audited and approved by the state board of examiners."

94-9827. Legal adviser of the board. The board may appoint any qualified attorney or the attorney general to act as its legal adviser and represent it in all proceedings whenever so requested by the board.

History: En. Sec. 7, Ch. 153, L. 1955.

94-9828. Duties of the director. The director shall be the executive officer of the board. He shall be responsible for such investigation and supervision as may be requested by the board or the courts. He shall, subject to the approval of the board, divide the state into districts and assign probation and parole officers to serve in the various districts and courts; he shall obtain office quarters for such staff in each district as may be necessary. He shall assign the secretarial, bookkeeping and accounting work to the clerical employees, including receipt and disbursement of money. He shall direct the work of the probation and parole officers and other employees assigned to him. He shall formulate methods of investigation, supervision, record keeping and reports. He shall conduct training courses for the staff. He shall seek to cooperate with all agencies, public and private, which are concerned with the treatment or welfare of persons on probation or parole. He shall further be charged with the administration of the provisions of the interstate compact for the supervision of parolees and probationers.

History: En. Sec. 8, Ch. 153, L. 1955.

94-9829. Duties of probation and parole officers. Probation and parole officers shall investigate all persons referred to them for investigation by the director of probation and parole or by any court to which they are instructed by the director to serve. They shall furnish to each person released under their supervision a written statement of the conditions of probation or parole and shall instruct him regarding same. They shall keep informed of the conduct and condition of each person released under their supervision and use all suitable methods to aid and encourage him to bring about improvement in his conduct and condition. Probation and parole officers shall keep detailed records of their work. They shall supervise the collection and disbursement of all moneys when so instructed by the director in accordance with the orders of a court. They shall make such reports in writing as the director may require.

History: En. Sec. 9, Ch. 153, L. 1955.

94-9830. Conditions of probation or suspension of sentence. The board may adopt general rules or regulations concerning the conditions of probation or suspension of sentence. Such conditions shall apply in the absence of any specific or inconsistent conditions imposed by a court. Nothing herein contained shall limit the authority of the court to impose or modify

any general or specific conditions of probation or of suspension of sentence.

The probation and parole officer may recommend, and by order duly entered, a court may modify any condition of probation or suspension of sentence at any time. Due notice shall be given to the probation and parole officer before any such conditions are modified and he shall be given an opportunity to be heard thereon. The court shall cause a copy of any such order to be delivered to the probation and parole officer and the probationer.

History: En. Sec. 10, Ch. 153, L. 1955.

94-9831. Arrest—subsequent disposition. At any time during probation or suspension of sentence a court may issue a warrant for the arrest of the defendant for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be personally served upon the defendant. The warrant shall authorize all officers named therein to return such defendant to the custody of the court or to any suitable detention facility designated by the court. Any probation and parole officer may arrest such defendant without a warrant, or may deputize any other officer with power of arrest to do so by giving him a written statement setting forth that the defendant has, in the judgment of said probation and parole officer, violated the conditions of his release. Such written statement delivered with the defendant by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the defendant. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation. Provisions regarding release on bail of persons charged with crime, shall be applicable to the defendants arrested under these provisions.

Upon such arrest and detention, the probation and parole officer shall immediately notify the court with jurisdiction over such prisoner, and shall submit in writing a report showing in what manner the defendant has violated the conditions of release. Thereupon, or upon an arrest by warrant as herein provided, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing may be informal or summary. If the violation is established, the court may continue to revoke the probation or suspension of sentence, and may require him to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.

A probationer or defendant under suspension of sentence for whose return a warrant has been issued by the court, shall, after the issuance of the warrant, if it is found that such warrant cannot be served, be deemed a fugitive from, or to have fled from, justice. If it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest, or any part of it, shall be counted as time served on probation or suspended sentence, shall be determined by the court.

History: En. Sec. 11, Ch. 153, L. 1955.

Commencement of Sentence

Where relator was sentenced to four years' confinement and the execution of the sentence was then suspended, which suspension was later revoked, the sentence commenced to run for all purposes on the date when judgment of conviction was entered. Any time between the imposition of the suspended sentence and its revocation should have been credited to the relator and failure to do so resulted in his illegal confinement. State ex rel. Wetzel v. Ellsworth, 143 M 54, 387 P 2d 442.

Subsequent Arrest for Violation

Where petitioner was placed on probation for one year on conditions aimed at rehabilitating him, subsequent imposition of judgment after he violated his probation did not put him in jeopardy in violation of the federal constitution or section 18, art. III, of the Montana constitution. In re Williams' Petition, 145 M 45, 399 P 2d 732.

94-9832. Parole authority and procedure. The board shall release on parole any person confined in the Montana state prison, except persons under sentence of death, when in its opinion there is reasonable probability that the prisoner can be released without detriment to himself or to the community, provided,

1. That no convict serving a time sentence shall be paroled until he shall have served at least one-quarter (¼) of his full term, less good time allowances off, as provided in section 80-740; except that any convict serving a time sentence may be paroled after he shall have served, upon his term of sentence, twelve and one-half (12½) years;

2. No convict, serving a life sentence, shall be paroled until he shall have served twenty-five (25) years, less the good time allowances off, as provided in section 80-740. All paroles shall issue upon order of the board, duly adopted.

Within two (2) months after his admission and at such intervals thereafter as it may determine, the board shall consider all pertinent information regarding each prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment and attitude in prison, and the reports of such physical and mental examinations as have been made.

Before ordering the parole of any prisoner, the board shall have the prisoner appear before it and shall interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released, but shall be subject to the orders of the board.

The board may adopt such other rules not inconsistent with law as it may deem proper or necessary, with respect to the eligibility of prisoners for parole, the conduct of parole hearings or conditions to be imposed upon parolees. Whenever an order for parole is issued it shall recite the conditions thereof.

History: En. Sec. 12, Ch. 153, L. 1955.

Compiler's Notes

Section 80-740, referred to in the first and second paragraphs of this section, was repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see sec. 80-1905.

Discretion of Board

Since the release of inmates on parole or by virtue of commutation of sentence rests in the discretion of the state board of pardons, their determination is not subject to review by the courts. Goff v. State, 139 M 641, 367 P 2d 557, 558.

Effect of Granting of a Parole

A parole releases from confinement a convict who has been committed to an institution, before the expiration of his sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 555.

The granting of a parole to an escape sentence by virtue of the wording of section 94-4203 did not result in a discharge of the original sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 557.

Hearing

Hearings involving inmates of the state prison are set by the state board of pardons and are entirely within their discretion. The only requirement for a hearing or interview arises when the board is about to order a parole. Goff v. State, 139 M 641, 367 P 2d 557, 558.

In petition for writ of habeas corpus brought by an inmate of the state prison, allegation of bias and prejudice by a member of the state board of pardons was without merit, where the files of the board disclosed that such member had disqualified himself from participating in any hearing involving petitioner. Goff v. State, 139 M 641, 367 P 2d 557, 558.

Power of Board

This section does not give the state board of pardons power to extinguish a former sentence by paroling a man to a subsequent sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 555.

Right to Parole

All inmates confined in the Montana state prison are eligible for parole except those under death sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 556.

In the case of consecutive sentences a prisoner is required to serve a period equivalent to one-fourth of the combined total of each sentence (less good time) before he is eligible for parole although subsequent sentence is for escape. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 557.

A prisoner is not entitled to release as a matter of right until he has completed his maximum sentence. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 556; Goff v. State, 139 M 641, 367 P 2d 557, 559.

References

Cited or applied in State ex rel. Ball v. Burrell, 129 M 585, 292 P 2d 144; In re Kane's Petition, 145 M 516, 402 P 2d 403; Petition of Frost, 146 M 18, 403 P 2d 612.

94-9833. Conditional release. A prisoner having served one-fourth (¼) of his term or terms, less good time allowances, shall upon parole, be deemed as released on parole until the expiration of the maximum term or terms for which he was sentenced less good time allowances as provided in section 80-740.

History: En. Sec. 13, Ch. 153, L. 1955.

Compiler's Notes

Section 80-740, referred to in this section, was repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see sec. 80-1905.

Good Time Allowance

Under former section 80-740 a convict, by escaping, forfeits all his good time. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 557.

Right to Parole

An inmate with multiple sentences, whether concurrent or consecutive, is eligible for parole. State ex rel. Herman v. Powell, 139 M 583, 367 P 2d 553, 556.

References

In re Kane's Petition, 145 M 516, 402 P 2d 403.

94-9834. Information from prison officials. It shall be the duty of all prison officials to grant to the members of the board, or its properly accredited representatives, access at all reasonable times to any prisoner over whom the board has jurisdiction under this act, to provide for the board or such representatives facilities for communicating with and observing such prisoner, and to furnish to the board such reports as the board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the board pertinent in determining whether such prisoner shall be paroled.

History: En. Sec. 14, Ch. 153, L. 1955.

94-9835. Persons may be heard—counsel. The board shall be required to hear oral statements from all persons desiring to be heard before the board and any person may be represented by counsel, provided that the board shall have the power to regulate procedure at all hearings.

History: En. Sec. 15, Ch. 153, L. 1955.

94-9836. Subpoenas. The board shall have the power to issue subpoenas compelling the attendance of such witnesses and the production of such records, books, papers and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas may be signed and oaths administered by the board or any member thereof. Subpoenas so issued may be served by any sheriff, constable, police officer, parole and probation officer, or other law-enforcement officer. In case of contumacy by, or refusal of any person to obey a subpoena issued to such person, any member of the board or duly authorized representative of any of them may make application to any court of record of this state and such court shall have jurisdiction to issue to such person an order requiring such person to appear before the board and there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail, or refuse to attend and testify, or to answer any lawful inquiry or to produce records, books, papers and other documents if it is in his power to do so, in obedience to a subpoena of the board or any member thereof, shall be punished by a fine of not more than two hundred dollars ($200) or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

History: En. Sec. 16, Ch. 153, L. 1955.

94-9837. Rules. The board shall have the power and duty to make rules for the conduct of persons heretofore or hereafter placed on parole or on probation under the supervision of the board by any court in this state, and for the investigation and supervision of such persons, except that the board shall not make any rule applying to a person on probation which conflicts with the conditions of probation imposed by the court.

History: En. Sec. 17, Ch. 153, L. 1955.

94-9838. Return of parole violator. At any time during release on parole or conditional release the board may issue a warrant for the arrest of the released prisoner for violations of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the prisoner. The warrant shall authorize all officers named therein to return such prisoner to the actual custody of the penal institution from which he was released, or to any other suitable detention facility designated by the board. Any probation and parole officer may arrest such prisoner without a warrant, or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of said probation and parole officer, violated the conditions of his release. Such written statement de-

livered with the prisoner by the arresting officer to the official in charge of the institution from which the prisoner was released or other place of detention, shall be sufficient warrant for the detention of the parolee or conditional releasee. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation. Pending hearing, as hereinafter provided, upon any charge of violation, the prisoner shall remain incarcerated in such institution.

Upon such arrest and detention, the probation and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release. Thereupon, or upon an arrest by warrant as herein provided, the board shall cause the prisoner to be promptly brought before it for a hearing on the violation charged, under such rules and regulations as the board may adopt. If the violation is established, the board may continue or revoke the parole or conditional release, or enter such other order as it may see fit.

A prisoner for whose return a warrant has been issued by the board shall, after the issuance of such warrant, if it is found that the warrant cannot be served, be deemed a fugitive or to have fled from justice. If it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest, or any part of it, shall be counted as time served under the sentence, shall be determined by the board.

History: En. Sec. 18, Ch. 153, L. 1955.

94-9839. Service of term for additional crime. Any prisoner who commits a crime while at large upon parole or conditional release, and who is convicted and sentenced therefor, shall serve such sentence concurrently with the terms under which he was released, unless otherwise ordered by the court in sentencing for the new offense.

History: En. Sec. 19, Ch. 153, L. 1955.

94-9840. Discharge of prisoner, parolee or conditional releasee. The period served on parole or conditional release shall be deemed service of the term of imprisonment, and, subject to the provisions contained in section 18 [94-9838] herein relating to a prisoner who is a fugitive from, or has fled from, justice, the total time served may not exceed the maximum term or sentence. When a prisoner on parole or conditional release has performed the obligations of his release, the board shall make a final order or discharge and issue a certificate of discharge to the prisoner.

History: En. Sec. 20, Ch. 153, L. 1955.

References

In re Kane's Petition, 145 M 516, 402 P 2d 403.

94-9841. Cases of executive clemency. The board shall investigate and report to the governor with respect to all cases of pardons, remissions of fines and forfeitures, and commutations of punishment after conviction and judgment for any offenses committed against the criminal laws of the state. A majority of the board shall advise, investigate, and approve each such case before the action of the governor shall be final. All applications for executive clemency shall be made to the board, which shall cause an investi-

gation to be made of all the circumstances surrounding the crime for which the applicant was convicted, and as to the individual circumstances relating to social conditions of the applicant. If the board, or a majority thereof, approves such application for executive clemency, it shall advise the governor and recommend action to be taken.

History: En. Sec. 21, Ch. 153, L. 1955.

94-9842. Notice of hearing applications for executive clemency. After the board has duly considered an application for executive clemency, and has by majority vote favored a recommendation of executive clemency to the governor, it must pass an order in substance as follows:

"Whereas, the Board of Pardons has officially received an application for Executive Clemency concerning ————————, a convict confined in the State Prison (or to one ————————, who has been found guilty of an offense committed against the laws of the state), who was convicted of the crime of ———————— committed at ————————, in the County of ————————, State of Montana, on the —— day of ————————, 19—, and sentenced for a term of —— years.

"Therefore, be it ordered that —— the —— day of ————————, 19—, be set apart for the consideration of said Executive Clemency matter; and all persons having an interest therein desiring to be heard either for or against the granting of the pardon (or commutation, remission of the fine or forfeiture) are hereby notified to be present at —— o'clock of said day, at ————————.

"Further, ordered that a copy of this order be printed and published in the ———————— (here insert name of some newspaper of general circulation in the county where the crime was committed) a daily (or weekly) newspaper printed and published at ———————— in the county of ———— ————————, once each week for two weeks beginning, ————————, 19—, and ending ————————."

History: En. Sec. 22, Ch. 153, L. 1955.

94-9843. Publication of order. The board must cause a copy of such order to be published in the newspaper therein designated, at least once a week for two weeks prior to the hearing, and at the same time cause to be deposited in the postoffice at the seat of government, postpaid, a copy of said order and notice addressed to the district judge, county attorney and sheriff, respectively, of the county where the crime was committed, and in like manner mail a copy of the order to the petitioner and the convict.

History: En. Sec. 23, Ch. 153, L. 1955.

94-9844. Proof of publication. Prior to the time set for hearing, proof of the publication of notice must be made by the publisher or managing agent.

History: En. Sec. 24, Ch. 153, L. 1955.

94-9845. Record of meeting, what to contain. At the hearing the board must cause to be kept a record showing:

1. The name of all persons appearing before the board on behalf of the person pardoned by the governor;

2. The name of all persons appearing before the board in opposition to the granting of the same;

3. The testimony of all persons giving evidence before the board;

4. That the affidavit and return from the printer of the publication of the notice and order of hearing was on file prior to the hearing.

History: En. Sec. 25, Ch. 153, L. 1955.

94-9846. When publication not necessary. No publication need be made as provided in sections 22, 23 and 24 [94-9842, 94-9843 and 94-9844], in the following cases:

1. When there is imminent danger of the death of the person convicted or imprisoned.

2. When the term of imprisonment of the applicant is within ten (10) days of its expiration.

History: En. Sec. 26, Ch. 153, L. 1955.

94-9847. Decision to be made. Within thirty (30) days after the hearing of any case, the board must make a decision in writing, and if such decision be made to recommend executive clemency, the copy of the decision, together with all papers used in each case shall be immediately transmitted to the governor.

History: En. Sec. 27, Ch. 153, L. 1955.

94-9848. Governor may respite. The governor has the power to grant respites after conviction and judgment, for any offenses committed against the criminal laws of the state, for such time as he thinks proper.

History: En. Sec. 28, Ch. 153, L. 1955.

94-9849. Governor to report to legislative assembly. The governor must communicate to the legislative assembly at each regular session, each case of remission of fine or forfeiture, reprieve, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of remission, commutation, pardon or reprieve, with the reason for granting the same, and the objection, if any, of any of the members of the board made thereto.

History: En. Sec. 29, Ch. 153, L. 1955.

94-9850. Cases of juveniles excluded. The provisions of this act shall not apply to probation in the juvenile courts or to parole from state institutions for juveniles.

History: En. Sec. 30, Ch. 153, L. 1955.

94-9851. Effective date—application to persons presently on parole or probation or eligible for. This act shall be in full force and effect from and after April 1, 1955. The provisions of this act are hereby extended to all persons who, at the effective date hereof, may be on probation or parole, or eligible to be placed on probation or parole under existing laws, with the same force and effect as if this act had been in operation at the time such persons were placed on probation or parole or became eligible to be

placed thereon as the case may be, provided that no person convicted and sentenced before the effective date hereof shall have his rights and earned good time reduced by the application of this act.

History: En. Sec. 33, Ch. 153, L. 1955.

Repealing Clause

Section 31 of Ch. 153, Laws 1955 read "That sections 94-9801, 94-9802, 94-9803, 94-9804, 94-9805, 94-9806, 94-9807, 94-9808, 94-9809, 94-9810, 94-9811, 94-9812, 94-9813, 94-9814, 94-9815, 94-9816, 94-9817, 94-9818, 94-9819 and 94-9820, Revised Codes of Montana, 1947, and all other acts and parts of acts inconsistent with the provisions of this act are hereby repealed."

Separability Clause

Section 32 of Ch. 153, Laws 1955 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

CHAPTER 99—BASTARDY PROCEEDINGS

94-9901. (12267) Complaint in bastardy, what to contain, how entitled.

Cross-Reference

Application of Montana Rules of Civil Procedure to this chapter, see Table A, M. R. Civ. P.

94-9908. (12274) Power of court over judgments and orders.

Collateral References

Foreign filiation or support order in bastardy proceedings, requiring periodic payments, as extraterritorially enforceable. 16 ALR 2d 1098.

CHAPTER 100—JUSTICES' AND POLICE COURT PROCEEDINGS—APPEALS

Section 94-100-25. Proceedings on plea of guilty or on conviction.

94-100-1. (12302) Proceedings must be by complaint.

Repeal

This section (Sec. 2680, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2001.

Sufficiency of Complaint

A complaint was sufficient where it stated facts constituting a public offense and charged a violation of the provisions of section 4-414, which was a misdemeanor (4-439) within the jurisdiction of the justice of the peace court under section 94-4916. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 856.

94-100-2. (12303) When warrant of arrest must issue—form.

Repeal

This section (Sec. 2681, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see Title 95, ch. 20.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 215.

94-100-3. (12304) Repealed.

Repeal

This section (Sec. 2682, Pen. C. 1895), relating to docket kept by justice of the peace or police judge, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2002.

94-100-4. (12305) Plea, how put in.

Repeal

This section (Sec. 2683, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see Title 95, ch. 16.

Written "Special Plea in Bar" Not Authorized

Justice of the peace was acting within his jurisdiction and in accordance with the law in overruling the defendant's

written "Special Plea in Bar" and ordering the defendant to answer to the complaint in accordance with this section and sections 94-6801 and 94-6802. State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 857, 859, 861.

94-100-5 to 94-100-9. (12306 to 12310) **Repealed.**

Repeal

These sections (Secs. 476, 477, p. 262, Cod. Stat. 1871; Secs. 2684 to 2688, Pen. C. 1895), relating to justices' and police court proceedings, trial of issue, change of venue, and true name of defendant, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see Title 95, chs. 16 and 20.

94-100-10. (12311) **New complaint.**

Repeal

This section (Sec. 479, p. 262, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see Title 95, ch. 17.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 856; City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 207.

94-100-11 to 94-100-24. (12312 to 12325) **Repealed.**

Repeal

These sections (Secs. 472, 490, pp. 262, 263, Cod. Stat. 1871; Secs. 2690 to 2703, Pen. C. 1895), relating to proceedings in justices' and police courts, the jury, how trial conducted and the verdict, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see Title 95, ch. 17 and secs. 95-1908, 95-1909, 95-1913, 95-2004 and 95-2006.

94-100-25. (12326) **Proceedings on plea of guilty or on conviction.** When the defendant pleads guilty, or is convicted, either by the court or by a jury, the court must render judgment thereon of fine or imprisonment, or both, as the case may be. The judgment must be executed by the sheriff, constable, marshal or policeman of the jurisdiction in which the conviction was had.

History: En. Sec. 2704, Pen. C. 1895; re-en. Sec. 9608, Rev. C. 1907; re-en. Sec. 12326, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1955. Cal. Pen. C. Sec. 1445.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-2007 and 95-2008.

Amendment

The 1955 amendment substituted the word "or" for "and" between the words "fine" and "imprisonment."

94-100-26 to 94-100-32. (12327 to 12333) **Repealed.**

Repeal

These sections (Secs. 492, 493, 503, pp. 263, 264, Cod. Stat. 1871; Secs. 2705 to 2711, Pen. C. 1895), relating to justices' and police court proceedings, punishments, discharge of acquitted defendant and payment of costs by prosecutor, judgment, and how defendant discharged, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-2007 and 95-2008.

94-100-33. (12334) **Defendant may appeal.**

Repeal

This section (Sec. 504, p. 264, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2009.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 861; State ex rel. Aho v. Justice Court of Laurel Township, 131 M 585, 313 P 2d 542.

94-100-34. (12335) **Notice of appeal.**

Repeal

This section (Sec. 2713, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2009.

Application of Section

This section permitting appeal by notice in open court does not apply to the taking of an appeal to the Supreme Court from a judgment of a district court. State ex rel. Treat v. District Court, 124 M 234, 221 P 2d 436, 437.

References

Cited in State ex rel. Aho v. Justice Court of Laurel Township, 131 M 585, 313 P 2d 542; Town of White Sulphur Springs v. Voise, 136 M 1, 343 P 2d 855.

94-100-35. (12336) Undertaking for fine and costs.

Repeal

This section (Sec. 2714, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2009.

Objection to Form of Appeal

Where defendant sought to appeal decision of justice of peace and although undertaking was not in proper form, it was approved by the justice, it was improper for the district court to dismiss the appeal for insufficiency of form of undertaking when no objection to the form was made in the justice's court of original jurisdiction. Reidelbach v. District Court, 142 M 52, 381 P 2d 470; Clark v. District Court, 142 M 56, 381 P 2d 472.

94-100-36, 94-100-37. (12337, 12338) Repealed.

Repeal

These sections (Secs. 2715, 2716, Pen. C. 1895), relating to judgment against sureties on appeal and undertaking on judgment of imprisonment, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1102 and 95-2009.

94-100-38. (12339) Trial anew.

Repeal

This section (Sec. 510, p. 265, Cod. Stat. 1871) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2009.

Effect of Payment of Fine after Appeal

Where defendant was convicted in a police court of the violation of a town ordinance and appealed to the district court and served notice of his appeal to the district court while in jail serving a sentence imposed for his nonpayment of the fine, the fact the defendant had paid the fine before the hearing in the district court did not effect an abandonment of his appeal. Town of White Sulphur Springs v. Voise, 136 M 1, 343 P 2d 855, 857.

Operation and Effect

Where an appeal is taken to the district court from a conviction in a police court for a liquor law violation, but neither the city nor the defendant requested the cause be set for trial, the judge of the court could not order the appeal dismissed "for want of prosecution" without giving notice to the defendant. Such an order is void and in excess of jurisdiction. State ex rel. Healy v. District Court, 125 M 77, 230 P 2d 763.

Trial de Novo

The district court does not, on appeal from a police court, sit as a court of review, but it tries the cause de novo. Town of White Sulphur Springs v. Voise, 136 M 1, 343 P 2d 855, 857.

References

Cited or applied in State ex rel. Borberg v. District Court, 125 M 481, 240 P 2d 854, 861; State ex rel. Aho v. Justice Court of Laurel Township, 131 M 585, 313 P 2d 542; City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 208.

94-100-39. (12340) Repealed.

Repeal

This section (Sec. 2718, Pen. C. 1895), relating to discharge of defendant on acquittal or judgment imposing fine only, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2008.

94-100-40. (12341) Judgment of imprisonment or fine, how executed.

Repeal

This section (Sec. 2719, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2008.

References

Cited or applied in Town of White Sulphur Springs v. Voise, 136 M 1, 343 P 2d 855, 856.

94-100-41. (12342) Defendant may be admitted to bail, etc.

Repeal

This section (Sec. 2720, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-1102.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 207.

94-100-42 to 94-100-46. (12343 to 12347) Repealed.

Repeal

These sections (Secs. 2721 to 2725, Pen. C. 1895), relating to justices' and police courts, subpoenas, affidavits, definition of police court, and disposition of fines by officer and justice, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-1801 and 95-2008.

CHAPTER 101—THE WRIT OF HABEAS CORPUS

94-101-1. (12348) Who may prosecute writ.

Repeal

This section (Sec. 9630, Rev. C. 1907) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2701.

Cross-Reference

Application of Montana Rules of Civil Procedure to this chapter, see Table A, M. R. Civ. P.

References

Cited or applied in State ex rel. Reid v. District Court, 126 M 489, 255 P 2d 693, 704.

94-101-2. (12349) Application for, how made.

Repeal

This section (Sec. 9631, Rev. C. 1907) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2703.

References

Cited or applied in Application of Enke, 129 M 353, 287 P 2d 19, 22, cert. den. 350 U S 923, 100 L Ed 808, 76 S Ct 212.

94-101-3. (12350) Repealed.

Repeal

This section (Sec. 9632, Rev. C. 1907), relating to writ of habeas corpus and by whom issued and before whom returnable, was repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2704.

94-101-4. (12351) Writ must be granted without delay.

Repeal

This section (Sec. 9633, Rev. C. 1907) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2705.

Mandamus to Compel Action by District Court

A writ of mandate to compel district court to take action on a petition for a writ of habeas corpus was denied by the supreme court where petitioner did not establish a clear legal right to have the writ of habeas corpus issued. Petition of John J. Tomich, 139 M 624, 365 P 2d 950.

94-101-5 to 94-101-13. (12352 to 12360) Repealed.

Repeal

These sections (Secs. 9634 to 9642, Rev. C. 1907), relating to writ of habeas corpus, contents, service, proceedings upon disobedience to writ, contents of return, production of body, hearings, and discharge of party from custody, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-2706 to 95-2713.

94-101-14. (12361) When to remand party.

Repeal

This section (Sec. 9643, Rev. C. 1907) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2713.

Denial of Federal Constitutional Rights

A writ of habeas corpus is not available in the state courts of Montana to correct denials of federal constitutional rights. Brown v. State, 202 F Supp 29, 30.

94-101-15. (12362) Grounds of discharge in certain cases.

Repeal

This section (Sec. 9644, Rev. C. 1907) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2701.

Motives of Prosecution

On a hearing of a habeas corpus sued out for the liberation of one who is sought to be extradited for the violation of the criminal laws of another state, upon a warrant of the governor issued upon a requisition of a demanding state, it is not admissible to hear evidence upon, or to inquire into, the motives or purposes of the prosecution. State v. Booth, 134 M 235, 328 P 2d 1104, 1111.

94-101-16 to 94-101-20. (12363 to 12367) Repealed.

Repeal

These sections (Secs. 9645 to 9649, Rev. C. 1907), relating to writ of habeas corpus, defective commitment warrants, writ for purpose of bail, and when judge to remand, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-2702, 95-2713 and 95-2716.

94-101-21. (12368) Person illegally restrained may be committed to, etc.

Repeal

This section (Sec. 9650, Rev. C. 1907) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-2713.

References

Cited or applied in Application of Butts, 129 M 440, 289 P 2d 949, 951.

94-101-22 to 94-101-33. (12369 to 12380) Repealed.

Repeal

These sections (Secs. 2769, 2771, Pen. C. 1895; Secs. 9651 to 9662, Rev. C. 1907), relating to writ of habeas corpus, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see Title 95, ch. 22 and secs. 95-2703, 95-2704, 95-2706 and 95-2715.

CHAPTER 201—CORONER'S INQUESTS

Section 94-201-6. Testimony in writing and where filed.

94-201-1 to 94-201-5. (12381 to 12385) Repealed.

Repeal

These sections (Secs. 2790 to 2794, Pen. C. 1895), relating to coroner's inquests, the jury, witnesses, and verdict of jury, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-803 to 95-807.

94-201-6. (12386) Testimony in writing and where filed. The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner, or under his direction, and forthwith filed by him, with the inquisition, in the office of the clerk of the district court of the county. The coroner must order the inquest proceedings recorded and transcribed by a qualified stenographer and such recording and transcribing expenses shall be paid by the county upon claims duly rendered and certified to by the coroner in the same manner as other claims against the county are paid.

History: En. Sec. 2795, Pen. C. 1895; re-en. Sec. 9668, Rev. C. 1907; re-en. Sec. 12386, R. C. M. 1921; amd. Sec. 1, Ch. 56, L. 1959. Cal. Pen. C. Sec. 1515.

Repeal

This section is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see sec. 95-808.

Amendment

The 1959 amendment added the last sentence to this section.

Repealing Clause

Section 2 of Ch. 56, Laws 1959, repealed all acts and parts of acts in conflict therewith.

94-201-7 to 94-201-13. (12387 to 12393) Repealed.

Repeal

These sections (Secs. 2796 to 2802, Pen. C. 1895), relating to coroner's inquests, exception to filing testimony, issuance of warrant by coroner, secrecy of inquest until after arrest, and the form and service of coroner's warrant, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see Title 95, ch. 6 and sec. 95-809.

CHAPTER 301—SEARCH WARRANTS

94-301-1 to 94-301-18. (12394 to 12411) Repealed.

Repeal

These sections (Secs. 2820 to 2837, Pen. C. 1895), relating to search warrants, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-703 to 95-705, 95-707 to 95-709 and 95-711 to 95-713.

94-301-19. (12412) Property, when to be restored.

Repeal

This section (Sec. 2838, Pen. C. 1895) is repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see secs. 95-714 and 95-715.

Collateral References

Forfeiture of money used in connection with gambling or lottery, or seized by officers in connection with an arrest or search on premises where such activities took place. 19 ALR 2d 1228.

94-301-20, 94-301-21. (12413, 12414) Repealed.

Repeal

These sections (Secs. 2839, 2840, Pen. C. 1895), relating to return of depositions, warrants, etc., by magistrate and search of defendant in presence of magistrate, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968. For new law, see Title 95, ch. 7.

CHAPTER 501—UNIFORM CRIMINAL EXTRADITION ACT

94-501-1. Definitions.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Criminal Extradition Act: Alaska, Colorado, Connecticut, Georgia, Hawaii, Illinois, Iowa, Kentucky, Missouri, Oklahoma, Panama Canal Zone, Tennessee, Texas, and Virgin Islands.

References

Cited or applied in State ex rel. Middlemas v. District Court, 125 M 310, 233 P 2d 1038, 1039; State v. Booth, 134 M 235, 328 P 2d 1104, 1109.

94-501-3. Demand—form.

Improper Form, Discharge of Fugitive

If the demand for extradition to the governor of the asylum state is not in proper form, the alleged fugitive will be discharged. State v. Booth, 134 M 235, 328 P 2d 1104, 1109.

Substantial Charge of Crime

A substantial charge of crime in the required papers submitted by the demanding state is a sufficient basis for extradition. State v. Booth, 134 M 235, 328 P 2d 1104, 1110.

94-501-6. Extradition of persons not present in demanding state, etc.

References

Cited in State v. Booth, 134 M 235, 328 P 2d 1104, 1109.

94-501-7. Issuance of warrant of arrest by governor—recitals therein.

References

Cited or applied in State v. MacLean, 129 M 500, 291 P 2d 250, 252.

94-501-20. Guilt or innocence of accused, when inquired into.

Operation and Effect

It is sufficient in habeas corpus proceedings to justify holding the petitioner if it is shown in Montana that the governor received from the governor of Oregon a copy of the affidavit made by the prosecuting witness, charging the defendant with a felony and also of the warrant of arrest issued by the judge of a district court of the state of Oregon and duly authenticated. State ex rel. Middlemas v. District Court, 125 M 310, 233 P 2d 1038, 1040.

CHAPTER 601—MISCELLANEOUS PROVISIONS RESPECTING SPECIAL PROCEEDINGS OF A CRIMINAL NATURE

(Repealed—Section 2, Chapter 196, Laws of 1967)

94-601-1 to 94-601-3. (12429 to 12431) Repealed.

Repeal

These sections (Secs. 2890 to 2892, Pen. C. 1895), relating to special proceedings, designation of parties, entitling affidavits, and subpoenas, were repealed by Sec. 2, Ch. 196, Laws 1967, effective January 1, 1968.

CHAPTER 701—PRISONER'S ATTENDANCE AT COURT—HOW OBTAINED

94-701-1. (12432) Persons imprisoned in state prison or in, etc.

Proper Procedure

Inmate of state prison, who sought speedy trial upon a justice court complaint, by virtue of which a detainer had been filed at the prison, should have petitioned the district court setting forth the facts of complaint against him and requested a speedy trial, rather than directing such request to the county attorney or petitioning the supreme court. Petition of Ditton, 145 M 594, 403 P 2d 205.

CHAPTER 801—FINES AND FORFEITURES—DISPOSAL OF

Section 94-801-1. Fines, costs, and forfeitures, how disposed of.
94-801-2. Traffic fines collected from juvenile offenders—disposition.

94-801-1. (12433) Fines, costs, and forfeitures, how disposed of. All fines and forfeitures collected in any court, except police courts, must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred; and after such costs are paid, the residue must, save as hereinafter provided, be paid to the county treasurer of the county in which the court is held and if not otherwise provided by law, by him credited to the general school fund of said county. In the event the fine or forfeiture arises from an action commenced pursuant to section 94-301 or section 94-304 of this code, the residue thereof, after such costs are paid, may be directed by the court to be paid, in whole or in part, to the wife, or to the guardian or custodian of the child or children. If the said fine or forfeiture is paid to the county treasurer at the time of such payment there shall be filed with the county treasurer, a

complete statement showing the total of the fine or forfeiture received or incurred with an itemized statement of the costs incurred by the county in such action, which statement shall give the title of the cause and be subscribed by the person or officer making such payment.

History: En. Sec. 2910, Pen. C. 1895; re-en. Sec. 9715, Rev. C. 1907; re-en. Sec. 12433, R. C. M. 1921; amd. Sec. 1, Ch. 83, L. 1923; amd. Sec. 1, Ch. 92, L. 1961. Cal. Pen. C. Sec. 1570.

Amendment

The 1961 amendment inserted the words "save as hereinafter provided" after "the residue must" in the first sentence; divided the former section into two sentences, the first and third sentences in the amended section; inserted the present second sentence; and, at the beginning of the present third sentence, substituted the words "If the said fine or forfeiture is paid to the county treasurer at the time of such payment" for "at the time of payment of any such fine or forfeiture."

Repealing Clause

Section 2 of Ch. 92, Laws 1961 repealed all acts and parts of acts in conflict therewith.

References

State ex rel. City of Libby v. Haswell, — M —, 414 P 2d 652.

94-801-2. Traffic fines collected from juvenile offenders—disposition. All fines collected by the district courts from children under eighteen (18) years of age, for unlawful operation of motor vehicles resulting from traffic summonses issued by the peace officers of the cities, counties, or by highway patrolmen, together with all penalty assessments levied and paid as provided for in section 4 [75-5304] of this act, shall be retained by the county treasurer of the county in which the offense occurred and at the end of each month distributed as follows:

(a) Fines collected as the result of summonses issued by city police officers shall be distributed to the city in which the police officer is employed, and credited to the city general fund;

(b) Fines collected as the result of summonses issued by county peace officers shall be retained by the county treasurer and credited to the county road fund;

(c) Fines collected as the result of summonses issued by state highway patrolmen shall be paid to the state treasurer of Montana and by him credited to the general fund of the state;

(d) All penalty assessments levied and paid as provided for in section 4 [75-5304] of this act shall be paid to the state treasurer of Montana and by him credited to the automobile driver education account in the earmarked revenue fund.

History: En. Sec. 1, Ch. 149, L. 1961; amd. Sec. 11, Ch. 226, L. 1965.

Title of Act

An act to provide for the distribution of fines collected by district courts for the unlawful operation of motor vehicles by children under the age of eighteen (18) years; providing for time of such distribution; repealing all acts or parts of acts in conflict herewith.

Amendment

The 1965 amendment inserted "together with all penalty assessments levied and paid as provided for in section 4 of this act" after "highway patrolmen" in the first paragraph; and added paragraph (d).

Repealing Clause

Section 2 of Ch. 149, Laws 1961 repealed all acts and parts of acts in conflict therewith.

CHAPTER 901—RECIPROCAL ENFORCEMENT OF SUPPORT

(Repealed—Section 3, Chapter 208, Laws of 1961)

94-901-1 to 94-901-18. Repealed.

Repeal

These sections (Secs. 1 to 18, Ch. 222, L. 1951), relating to reciprocal enforcement of support, were repealed by Sec. 3, Ch. 208, Laws 1961. For new provisions, see secs. 93-2601-1 to 93-2601-40.

CHAPTER 1001—CRIMINAL LAW STUDY COMMISSION

Section 94-1001-1. Intent and purpose of act.
94-1001-2. Appointment of criminal law study commission—scope of work.
94-1001-3. Composition of commission—application for appointment.
94-1001-4. Distribution of proposed changes to bench and bar.
94-1001-5. Submission of final draft to supreme court.
94-1001-6. Notice by supreme court to bench and bar—hearings.
94-1001-7. Legislative adoption required.
94-1001-8. Changes suggested by supreme court.
94-1001-9. Employment of secretary and research services by commission.
94-1001-10. Reimbursement of commission members.
94-1001-11. Officers of commission—rules—records.

94-1001-1. Intent and purpose of act. The intent and purpose of this act is to establish a commission to suggest changes in the criminal law of the state of Montana to the end of uniformity in definition of crimes, arrests, trials, sentencing, pardon and parole.

History: En. Sec. 1, Ch. 103, L. 1963.

Title of Act

An act authorizing and empowering the supreme court of the state of Montana to recommend changes in the criminal law of the state of Montana to the end of uniformity in definition of crimes, arrests, trials, sentencing, pardon and parole, for the purpose of simplifying judicial proceedings and promoting the speedy determination of litigation upon its merits; creating a commission to prepare suggested changes in the criminal law of the state of Montana and prescribing the membership and powers and duties of said commission; providing for employment of a secretary-stenographer of the commission and employment of research agencies, if deemed necessary; providing for the payment of actual travel and other expenses incurred by members of said commission in the discharge of their duties; providing that such recommended changes in the criminal law of the state of Montana shall be submitted to the Thirty-ninth Legislative Assembly of the state of Montana for its consideration; repealing all acts and parts of acts in conflict herewith and providing for an effective date of this act.

94-1001-2. Appointment of criminal law study commission—scope of work. That within thirty (30) days following the adjournment of this legislative assembly, the supreme court of Montana shall appoint a commission of eleven (11) persons, which commission shall meet and organize itself within thirty (30) days following appointment; and which commission shall make a complete study, consider and finally prepare suggested changes in the criminal law of the state of Montana to the end of uniformity in definition of crimes, arrests, trials, sentencing, pardon and parole, which suggested changes shall be comprehensive in scope.

History: En. Sec. 2, Ch. 103, L. 1963.

94-1001-3. Composition of commission—application for appointment. The commission shall be composed of the chief justice of the supreme court

of the state of Montana, or an associate justice of the supreme court designated by the chief justice, three (3) judges from the district court of the state, and seven (7) lawyers. The judges so selected shall be from a list of suggested members submitted to the supreme court by the president of the Montana judges' association. Any lawyer actively engaged in the practice of law in the state of Montana or members of the faculty of the Montana university law school may submit an application to the supreme court indicating a desire to serve on such commission. The supreme court shall select members of the commission from among the applicants. The supreme court shall have the power to provide for terms of office, removals from office, filling of vacancies and changes in personnel of the commission.

History: En. Sec. 3, Ch. 103, L. 1963.

94-1001-4. Distribution of proposed changes to bench and bar. The commission so appointed shall prepare its suggested changes and shall distribute copies to the bench and bar of the state for their consideration and suggestions as they may submit to the commission.

History: En. Sec. 4, Ch. 103, L. 1963.

94-1001-5. Submission of final draft to supreme court. The commission shall within six (6) months after distribution of copies of the suggested changes submit the tentative final draft of suggested changes in the criminal law of the state of Montana, to the supreme court for approval.

History: En. Sec. 5, Ch. 103, L. 1963.

94-1001-6. Notice by supreme court to bench and bar—hearings. The submission of the tentative final draft to the supreme court will be noticed by the court by mailing notice of hearing to all district judges of the state and all attorneys licensed to practice in the Montana courts, as shown by the records of the clerk of the supreme court, and heard by it within ninety (90) days after submission by the commission, and all interested persons and organizations may appear that day by petition specifying their suggestions or objections thereon.

History: En. Sec. 6, Ch. 103, L. 1963.

94-1001-7. Legislative adoption required. Any suggested changes promulgated under this act shall be effective only upon adoption by the legislature.

History: En. Sec. 7, Ch. 103, L. 1963.

94-1001-8. Changes suggested by supreme court. The supreme court of this state shall have the right to suggest changes and amendments to the criminal law of the state of Montana from time to time for consideration by the legislative assembly.

History: En. Sec. 8, Ch. 103, L. 1963.

94-1001-9. Employment of secretary and research services by commission. The said commission may from time to time employ a secretary-stenographer, as it deems necessary, to assist in its work, and shall fix

the compensation of such secretary-stenographer. It shall further have the power to employ the services of any research agency which it deems necessary in the discharge of its duties.

History: En. Sec. 9, Ch. 103, L. 1963.

94-1001-10. Reimbursement of commission members. Members of said commission shall serve without compensation, but shall be reimbursed for actual travel and other expenses incurred in the discharge of their duties, including attendance at meetings.

History: En. Sec. 10, Ch. 103, L. 1963.

94-1001-11. Officers of commission—rules—records. The said commission shall from time to time elect one of its members as chairman, and may from time to time elect such other officers from among its membership as the commission may deem desirable. The commission is empowered to adopt rules for its own procedure, and to make all arrangements for its meetings, and to carry out the purpose for which it is created. The commission is directed to keep accurate records of its activities and proceedings.

History: En. Sec. 11, Ch. 103, L. 1963.

Separability Clause

Section 12 of Ch. 103, Laws 1963 read "If any sentence, section, clause or phrase of this act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly of the state of Montana hereby declares that it would have passed this act irrespective of the fact that any one or more sections, sentences, clauses or phrases may be declared unconstitutional or invalid."

Repealing Clause

Section 13 of Ch. 103, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 14 of Ch. 103, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

CHAPTER 1101—INTERSTATE AGREEMENT ON DETAINERS

Section 94-1101-1. Agreement on detainers adopted—text.
94-1101-2. District courts to act.
94-1101-3. Enforcement and cooperation by public agencies.
94-1101-4. Escape from custody on detainer—penalty.
94-1101-5. Institutional officers to honor agreement.
94-1101-6. Coordinator of agreement—appointment—duties.

94-1101-1. Agreement on detainers adopted—text. The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows: The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status

of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request for custody or availability is initiated pursuant to article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to article III or article IV hereof.

Article III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial at the next term of court after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt request[ed].

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment

under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V

(a) In response to a request made under article III or article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the periods provided by this act, the ap-

propriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI

(a) In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: **En. Sec. 1, Ch. 215, L. 1963.**

Title of Act

An act to provide for the reciprocal and expeditious disposition of detainers filed against inmates of prisons or other correctional institutions of party states; to provide for the speedy trial of persons confined in a penal or other correctional institution of a party state on charges and detainers based on untried indictments, informations or complaints and to provide for the final disposition of such charges and detainers; to provide that temporary custody of such prisoners may be made available to appropriate officers of party states for trial; to provide that escape from such temporary custody shall be punishable by confinement in the state prison for a term of not less than one year nor more than ten years; to provide for the appointment of a coordinator of this agreement; providing for an effective date and a repealing clause.

References

In re Palmer's Petition, 144 M 519, 399 P 2d 90.

94-1101-2. District courts to act. The phrase "appropriate court" as used in the agreement on detainers shall, with reference to the courts of this state, mean; district courts.

History: **En. Sec. 2, Ch. 215, L. 1963.**

94-1101-3. Enforcement and cooperation by public agencies. All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

History: **En. Sec. 3, Ch. 215, L. 1963.**

94-1101-4. Escape from custody on detainer—penalty. Every prisoner confined in state prison for a term less than for life who has been lawfully delivered into the temporary custody of appropriate officers of a party state for trial on a charge or detainer based on an untried indictment, information or complaint and who escapes therefrom, is punishable by imprisonment in the state prison for a term of not less than one year nor more than ten years; said second term of imprisonment to commence from the time he would otherwise have been discharged from said prison.

History: En. Sec. 4, Ch. 215, L. 1963.

94-1101-5. Institutional officers to honor agreement. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

History: En. Sec. 5, Ch. 215, L. 1963.

94-1101-6. Coordinator of agreement—appointment—duties. The governor shall appoint an officer of this state as coordinator of this agreement who, acting jointly with like officers of party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this act, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

History: En. Sec. 6, Ch. 215, L. 1963.

Transmittal of Copies of Act

Section 7 of Ch. 215, Laws 1963 read "Copies of this act shall, upon its approval, be transmitted to the governor of each state, the attorney general and the administrator of general services of the United States, and the council of state governments."

Repealing Clause

Section 8 of Ch. 215, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 9 of Ch. 215, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 9, 1963.

TITLE 95

MONTANA CODE OF CRIMINAL PROCEDURE

Title 95, the new Montana Code of Criminal Procedure (Chapter 196, Laws of 1967), **to become effective January 1, 1968**, is printed in a separate pamphlet delivered with the 1967 Pocket Supplements to Revised Codes of Montana, 1947.

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INDEX

References are to Title and Section numbers

A

ABSTRACTERS OF TITLE
Compensation of members of board of examiners, 66-2104
Moneys received by board of examiners, deposit and use, 66-2104
Reports of board of examiners to governor, 66-2106

ACADEMY
Law enforcement academy, 75-5201 to 75-5208—See COLLEGES AND UNIVERSITIES, Law enforcement academy

ACCORD AND SATISFACTION
Affirmative defense, M. R. Civ. P., Rule 8(c)

ACCOUNTANTS
Corporations for practice of accountancy, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Fee for examination, 66-1806
Investment advice exempt from securities act, 15-2004

ACCOUNTS RECEIVABLE
Sale of accounts subject to Uniform Commercial Code, 87A-9-102—See also SECURED TRANSACTIONS

ACTIONS
Commencement of action by complaint, M. R. Civ. P., Rule 3
Dismissal of action
- class actions, court approval required for dismissal or compromise, M. R. Civ. P., Rule 23(c)
- costs when dismissed action is again commenced, M. R. Civ. P., Rule 41(d)
- failure to issue or serve summons as ground, M. R. Civ. P., Rule 41(e)
- involuntary dismissal, M. R. Civ. P., 41(b)
- voluntary dismissal, M. R. Civ. P., Rule 41(a)

Form of action, M. R. Civ. P., Rule 2
Offer of judgment before trial, effect on costs, M. R. Civ. P., Rule 68
Shareholders' derivative actions, allegations required, M. R. Civ. P., Rule 23(b)
Uniform Commercial Code rights and obligations, action to enforce, 87A-1-106

ADJUTANT GENERAL
Assistant adjutants-general, appointment, rank, and duties, 77-117
Salary, 77-117
Selection, 77-117

ADOPTION
Adults, procedure for adoption, 61-140
Birth certificate, issuance of substitute on adoption, 69-4420
- recording of substitute certificate, 69-4421
- restoration of original certificate on annulment of adoption, 69-4421

Minor natural parent, right to relinquish child for adoption, 61-218
Registrar of vital statistics, report to, 69-4433
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A
Service of process on natural parents, 61-211

References are to Title and Section numbers

ADULTERATION
Food, drugs and cosmetics, 27-701 to 27-725—See FOOD AND DRUGS, Food, Drug and Cosmetic Act

ADVERTISING
Consumer loan licensees, limitations on, 47-219
Highways, advertising and zoning regulation, 32-4701 to 32-4714—See HIGHWAYS, BRIDGES AND FERRIES, Zoning regulation along highways

AERONAUTICS
City and county establishment of airports
acquisition of land for airports, 1-801
creation of board to govern airport, 1-803
eminent domain, power to exercise, 1-802
expenses, how defrayed, 1-803
land deemed acquired for public use, 1-802
Gasoline tax exemption permits, issuance and use, 84-1802
Insurance required of commercial air operators, 1-314
amount set by commission, 1-315
continuation in force required, 1-318
definition of terms
"aircraft" defined, 1-312
"commercial air operator" defined, 1-311
"person" defined, 1-313
evidence of insurance deposited with commission, 1-316
copies of policies acceptable as evidence, 1-317
unauthorized insurers' policies acceptable, 1-321
violations of act as misdemeanor, 1-320
Intrastate air carriers, certification and regulation by commission, 1-323
definition of terms, 1-322
federally certified carriers exempt, 1-322
notice by publication, 1-324
Landing without consent of landowner prohibited, exception, 1-603
Reckless flying prohibited, 1-603
State aeronautics commission
expenses, payment of costs, 1-501
rules, insurance of commercial air operators, 1-319

AGENCY
Uniform Commercial Code supplemented by general principles of law, 87A-1-103

AGRICULTURE
Bean warehousemen, license required, 3-704
Coloration of wheat, oats, rye or barley
required when products treated with injurious or toxic substances, 94-35-271.1
sale or offering for sale in violation of act prohibited, 94-35-271.2
violation of act requiring coloration, penalty, 94-35-271.3
Commercial feeds, 3-2012 to 3-2024
administration of act by commissioner of agriculture, 3-2012
adulteration of feeds prohibited, 3-2018
analysis of feeds, 3-2020
condemnation and confiscation of noncomplying feeds, 3-2022
customer-formula feeds, definition and application of act to, 3-2017
invoice, required contents, 3-2015
definition of terms, 3-2013
fees for inspection, 3-2016
information in reports confidential, 3-2024
injunction to restrain violations, 3-2023
judicial review of commissioner's actions, 3-2023
labeling of feeds, required contents, 3-2015
misbranded feeds, distribution prohibited, 3-2019
publication of information by commissioner, 3-2024
records to be kept by distributors, 3-2016

References are to Title and Section numbers

AGRICULTURE (Continued)
Commercial feeds (Continued)
registration of feeds, 3-2014
cancellation and revocation of registration, procedure, 3-2021
reports of annual value of feeds distributed, 3-2016
rules and regulations, promulgation and enforcement, 3-2021
sampling and analysis of feeds, 3-2020
violations of act, penalties and prosecution, 3-2023
withdrawal from sale orders, 3-2022
Commercial fertilizers
appeal from commissioner's act, order or ruling, 3-1727
cancellation of registration
grounds for cancellation, 3-1724
hearing on cancellation, 3-1723
definition of terms under fertilizer law of 1957, 3-1714
fees for inspection, 3-1717
labeling of soil amendments, 3-1716
license for distributor to mix materials to order, 3-1715
registration of brands, grades, and soil amendments, 3-1715
reports of distributors as to amount distributed, 3-1717
rules and regulations, 3-1723
Commissioner of agriculture
appeals from commissioner's decisions in commercial fertilizer cases, 3-1727
oath of office, 3-103
poultry improvement, powers of commissioner, 3-2201
salary, 3-103
Department of agriculture
division of wheat research and marketing, 3-2903
enforcement of act regarding labeling of paints and paint products, 3-1513
power to contract, 3-107
Eggs and egg dealers, disposition of fees from licenses, 3-2302, 3-2315
Fruit pest control, disinfection and destruction of packages and other materials, 3-1103
Fur-bearing animals, production defined as agriculture, 3-110.1
Grading and branding of farm products, 3-1404
Grain storage as basis for farm credit
expense of administration of act, manner of payment, 3-420
fees and compensation of inspectors, 3-408
Grain testing, fees and charges, 3-233
protein testing, 3-510
Grain warehousemen
bailment, possession of warehouseman construed as, 3-226
bond, 3-228
definition of terms, 3-201
fees payable to sealer of weights and measures, 3-202
insurance coverage, required, 3-228
judicial process for debts of warehouseman, exemption from, 3-226
license fee, 3-228
penalty for false report or failure to file reports, 3-227
penalty for operation without license, 3-228
penalty for use of unauthorized weighing or measuring device, 3-202
reports to commissioner, 3-227
Montana quality label, procurement and use, fees, 3-2503
Mustard seed
administration of act by commissioner of agriculture, 3-1906
funds accruing, disposition, 3-1910
Nurseries and nurserymen, license required, fees, 3-1212
Poultry improvement, 3-2201 to 3-2205, 3-2207, 3-2209 to 3-2212—See POULTRY
Public warehousemen for farm storage, license required, 3-602
Rodent pest control, purchase and sale of supplies, 3-2704
Rural rehabilitation trust assets, administration, 3-2803
Sealers of grain, fee for filing of certificate, 3-904
Seeds—See SEEDS
Wheat research and marketing
annual report filed by division chief and commissioner, 3-2914

References are to Title and Section numbers

AGRICULTURE (Continued)
Wheat research and marketing (Continued)
assessment on wheat sold or pledged, 3-2911
federal government as purchaser, assessment inapplicable, 3-2912
payment of assessment, 3-2913
bonds of division chief, deputy and assistant, 3-2916
committee appointed by governor, 3-2905
chairman, selection, 3-2908
compensation of members, 3-2906
meetings of committee, 3-2908
powers of committee, 3-2909
removal of committee members by governor, 3-2907
contracts for carrying out research, 3-2918
declaration of policy, 3-2902
definitions, 3-2904
division as part of department of agriculture, 3-2903
duration of act, 3-2920
gifts, grants or donations for research, 3-2915
invoice delivered by buyer to seller, 3-2913
office established by department, 3-2910
revolving account in department of agriculture, 3-2917
reversion on expiration of act, 3-2920
short title of act, 3-2901
violations of act, penalty, 3-2919

AIR POLLUTION CONTROL
Administration of act by state board of health, 69-3907
Advisory council, members and powers, 69-3908
Definitions, 69-3906
Director of air pollution control, appointment, powers and duties, 69-3907
Emergency procedure, 69-3915
Exemptions, application for and grounds, 69-3916
Inspection of premises, power to enter, 69-3912
Limitations on effect of act, 69-3922
Limitations on emission of pollutants, 69-3913
Local air pollution control programs, 69-3919
federal aid, 69-3920
state aid, 69-3920
Penalties for violation, 69-3921
Permits required for installation of machinery and other articles that contaminate air, 69-3911
Policy and purpose of act, 69-3905
Prohibition of air contaminating sources, 69-3911
Records, confidentiality, 69-3918
Rules, public hearing and judicial review, 69-3917
Short title of act, 69-3904
Sources of contamination, classification and reporting, 69-3910
State board of health powers, 69-3909
enforcement, 69-3914
limitations on pollutants emission, adoption of more stringent rules, 69-3913
Taxation, classification of property, 69-3923

AIRPORTS
See AERONAUTICS

ALCOHOLIC BEVERAGES
Bottle clubs
abatement as nuisance, 4-173
definition, 4-172
penalty for violation, 4-173
prohibited, 4-172
Definition of terms, 4-102
Dentist, administration of beverage by, 4-137
Druggist, possession and sale of liquor by, 4-134
Hospital, administration of beverage by, 4-139

References are to Title and Section numbers

ALCOHOLIC BEVERAGES (Continued)
Identification cards, false procurement, penalty, 94-2014
Interdiction order, procedure and effect, 4-201
notice and filing of order, 4-202
presence of interdicted person prohibited where liquor sold, 4-164
License proceedings, application of rules of civil procedure, M. R. Civ. P., Rule 81(a), Table A
Liquor control board
compensation of members, 4-105
composition of board, 4-104
employees of board, salaries, 4-108
meetings of board, 4-105
samples of beverages received, reports required, 4-153
terms of office of members, 4-104
Manufacture of beverages permitted to federal licensees, 4-140
Montana beer act
brewers
barrelage tax, 4-317
financial interest in retailer prohibited, 4-349
fixtures, furniture, equipment, etc., brewers not to supply to retailers, exception, 4-349
persons to whom brewers may sell beer, 4-317
cash sales for beer delivered to retail licensee, 4-349
closing hours for licensed retail establishments, 4-303
credit, limitation on brewer or wholesaler from extending to retailer, 4-349
days establishments to be closed, 4-303
fair associations, special permits for, 4-332
fraternal organizations, special permits to, 4-332
imported beer, tax on, 4-324
licenses
fees for licenses, 4-341
grocery or drugstore, licensing, 4-333
issuing for operation on seasonal basis, 4-333
lapse for nonuse, 4-333
wholesaler's license, 4-318
retail sales for consumption off premises, 4-329
veterans' organizations, special permits to, 4-332
wholesalers, fixtures, furniture and equipment not to be furnished by, exception, 4-349
Physician, prescription or administration by, 4-136
Retail liquor license act
days retail establishments to be closed, 4-414
fraternal organizations, special permits for sale, 4-409.1
hearing on application for license, 4-407.1
hours retail establishments to be closed, 4-414
lapse of license for nonuse, 4-403
license for seasonal operation, 4-403
notice of application for license, publication by board, 4-407.1
number of licenses authorized, 4-403
veterans' organizations, special permits for sale, 4-409.1
Sale of beverages by vendor, 4-116
State liquor stores, disposition of proceeds of sales, 4-229
Veterinary, administration of beverage by, 4-138
Wage Protection Act for bars and taverns, 41-2001 to 41-2011—See WAGES, Restaurant, Bar and Tavern Wage Protection Act

ALCOHOLISM SERVICES CENTER
Location, purpose and powers of center, 80-2404

ALIENATION OF AFFECTIONS
Acts within state not to give rise to cause of action, 17-1203
Cause of action abolished, 17-1201
Litigation and threat of litigation prohibited, 17-1204
Penalty for bringing action, 17-1206
Settlements and compromises void, 17-1205

References are to Title and Section numbers

AMBULANCE
Establishment of service by county, city or town authorized, 69-3601
Joint service authorized, 69-3601
Methods of operation of service, 69-3602
Previously existing service unaffected, 69-3603

ANIMALS
Dead animals, unlawful disposition, penalty for violations, 69-4518, 69-4519
Fur-bearing animals, production defined as agricultural pursuit, 3-110.1
Shelter, failure to provide as cruelty, 94-1201

ANNEXATION
Contiguous tracts or parcels of land, annexing to cities, procedure, 11-403

APPEALS
Briefs filed in supreme court
amicus curiae briefs, when permitted, M. R. App. Civ. P., Rule 24
appellant's brief, contents and arrangement, M. R. App. Civ. P., Rule 23(a)
appendices to briefs, when filed, M. R. App. Civ. P., Rule 25(a)
arrangement of appendix, M. R. App. Civ. P., Rule 25(c)
contents of appendix, M. R. App. Civ. P., Rule 25(b)
costs allowed for briefs, M. R. App. Civ. P., Rule 23(g)
cross-appeals, briefs in cases involving, M. R. App. Civ. P., Rule 23(h)
dismissal of appeal on failure to file brief, M. R. App. Civ. P., Rule 26(c)
exhibits, reproduction in separate volume, M. R. App. Civ. P., Rule 25(d)
length of briefs, M. R. App. Civ. P., Rule 23(g)
number of copies filed and served, M. R. App. Civ. P., Rule 26(b)
parties, references to in briefs, M. R. App. Civ. P., Rule 23(d)
record, references to in briefs, M. R. App. Civ. P., Rule 23(e)
reply brief, contents, M. R. App. Civ. P., Rule 23(c)
respondent's brief, contents, M. R. App. Civ. P., Rule 23(b)
statutes, rules and regulations, reproduction in briefs, M. R. App. Civ. P., Rule 23(f)
time for filing briefs, M. R. App. Civ. P., Rule 26(a)
title of case, statements on cover and first page, M. R. App. Civ. P., Rule 27(c)
typewritten briefs, format, M. R. App. Civ. P., Rule 27(b)
typographical form of briefs, M. R. App. Civ. P., Rule 27(a)
Calendar, placement of causes on, M. R. App. Civ. P., Rule 39(a)
advancement of causes having precedence, M. R. App. Civ. P., Rule 39(c)
setting causes for argument, M. R. App. Civ. P., Rule 39(b)
Commercial fertilizer decisions, appeal from, 3-1727
Constitutional questions raised on appeal, notice to attorney general, M. R. App. Civ. P., Rule 38
Consumer loan commissioner, appeals from, 47-225
Costs on appeal taxed by court, M. R. App. Civ. P., Rule 33(a)
briefs and appendices, restriction on costs, M. R. App. Civ. P., Rule 33(b)
district court costs, M. R. App. Civ. P., Rule 33(c)
notation of costs by clerk, M. R. App. Civ. P., Rule 33(f)
unnecessary costs not recovered, M. R. App. Civ. P., Rule 33(e)
Criminal cases, 95-2401 to 95-2430—See CRIMINAL PROCEDURE, Appeals
review of legal sentences, 95-2211, 95-2501 to 95-2504
Cross-appeal, reversal on, M. R. App. Civ. P., Rule 14
Damages for appeal without merit, M. R. App. Civ. P., Rule 32
Decision on appeal, notice to parties, M. R. App. Civ. P., Rule 35(a)
Decision subject to review on appeal from judgment, M. R. App. Civ. P., Rule 2
Dismissal of appeals, effect, M. R. App. Civ. P., Rule 12
brief, failure to file as ground for dismissal, M. R. App. Civ. P., Rule 26(c)
record, failure to transmit as ground for dismissal, M. R. App. Civ. P., Rule 11(c)
voluntary dismissal, M. R. App. Civ. P., Rule 36
District courts, appeals to, applicability of rules, M. R. Civ. P., Rule 81(b)
appellate rules not applicable, M. R. App. Civ. P., Rule 42(b)
justices' or police courts, trial of criminal cases on appeal, 95-2009
Docketing of appeal, M. R. App. Civ. P., Rule 11(a)
respondent docketing appeal, M. R. App. Civ. P., Rule 11(c)
Entry and notice of judgments and orders, M. R. App. Civ. P., Rule 30(a)

References are to Title and Section numbers

APPEALS (Continued)
Exceptions unnecessary to lay ground work for appeal, M. R. Civ. P., Rule 46
Executors' and administrators' acts pending appeal validated, M. R. App. Civ. P., Rule 13
Filing of papers with supreme court, manner of accomplishment, M. R. App. Civ. P., Rule 20(a)
Guardians' acts pending appeal validated, M. R. App. Civ. P., Rule 13
Habeas corpus, appeal from order discharging petitioner, 95-2714
Injunction granted by supreme court on ex parte proceedings, M. R. App. Civ. P., Rule 40
Interest on judgments, M. R. App. Civ. P., Rule 31
Intermediate orders and decisions subject to review on appeal from judgment, M. R. App. Civ. P., Rule 2
Judgment on appeal, entry by clerk and notice to parties, M. R. App. Civ. P., Rule 30(a)
transmission to and entry by clerk of district court, M. R. App. Civ. P., Rule 16
Judgments subject to appeal, M. R. App. Civ. P., Rule 1
Justices' courts, appeal of criminal cases, 95-2009
Milk control board, judicial review of orders, 27-428
Motions in supreme court, contents and manner of filing, M. R. App. Civ. P., Rule 22
Notice of appeal filed in district court, M. R. App. Civ. P., Rule 4(a)
content of notice, M. R. App. Civ. P., Rule 4(c)
form for notice, M. R. App. Civ. P., Appendix of Forms, Form 1
joint or separate notice on joint appeals, M. R. App. Civ. P., Rule 4(b)
neglect in filing notice, extension of time, M. R. App. Civ. P., Rule 5
service of notice, M. R. App. Civ. P., Rule 4(d)
time for filing notice, M. R. App. Civ. P., Rule 5
Occupational disease act, appeals under, 92-1362 to 92-1365
Oral argument before supreme court
agreement of parties to dispense with argument, M. R. App. Civ. P., Rule 29(f)
consolidation of cross and separate appeals for argument, M. R. App. Civ. P., Rule 29(d)
exhibits, use during argument, M. R. App. Civ. P., Rule 29(g)
failure of counsel to appear for argument, M. R. App. Civ. P., Rule 29(e)
notice of time and place of argument, M. R. App. Civ. P., Rule 29(a)
order and content of argument, M. R. App. Civ. P., Rule 29(c)
postponement of argument, request for, M. R. App. Civ. P., Rule 29(a)
time allowed for argument, M. R. App. Civ. P., Rule 29(b)
Orders subject to appeal, M. R. App. Civ. P., Rule 1
Parties to appeal, designation, M. R. App. Civ. P., Rule 1
public officer as party to appeal, M. R. App. Civ. P., Rule 37(c)
substitution of parties for death or other cause, M. R. App. Civ. P., Rule 37
Pauper's form of appeal
application to district court to proceed in forma pauperis, M. R. App. Civ. P., Rule 18(a)
application to supreme court to proceed in forma pauperis, M. R. App. Civ. P., Rule 18(b)
form for application, M. R. App. Civ. P., Appendix of Forms, Form 2
typewritten form permitted for papers filed, M. R. App. Civ. P., Rule 18(c)
Police courts, appeal of criminal cases, 95-2009
Prehearing conference to simplify issues before court, M. R. App. Civ. P., Rule 28
Record on appeal, papers and exhibits constituting, M. R. App. Civ. P., Rule 9(a)
agreed statement as record on appeal, M. R. App. Civ. P., Rule 9(d)
correction of the record, M. R. App. Civ. P., Rule 9(e)
dismissal of appeal for failure to file in time, M. R. App. Civ. P., Rule 11(c)
fee for filing of record, time of payment, M. R. App. Civ. P., Rule 11(a)
filing of record by supreme court clerk, M. R. App. Civ. P., Rule 11(b)
modification of the record, M. R. App. Civ. P., Rule 9(e)
preliminary hearing in supreme court, transmission of record for, M. R. App. Civ. P., Rule 10(f)
retention of record in district court, M. R. App. Civ. P., Rule 10(d)
stipulation of parties for retention, M. R. App. Civ. P., Rule 10(e)
statement of proceedings in lieu of transcript, preparation and settlement, M. R. App. Civ. P., Rule 9(c)
time for transmission of record, M. R. App. Civ. P., Rule 10(a)
extension of time, M. R. App. Civ. P., Rule 10(c)
reduction of time, M. R. App. Civ. P., Rule 10(c)

APPEALS (Continued)
Record on appeal (Continued)
transcript of proceedings, preparation and certification, M. R. App. Civ. P., Rule 9(b)
transmission of record by clerk of district court, M. R. App. Civ. P., Rule 10(b)
Rehearing, grounds and time for filing petition, M. R. App. Civ. P., Rule 34
Remittitur to clerk of district court, M. R. App. Civ. P., Rule 16
time of issuance, M. R. App. Civ. P., Rule 35(b)
Removal of papers from clerk's office, restrictions, M. R. App. Civ. P., Rule 39(d)
Reversal on appeal, remedial powers of supreme court, M. R. App. Civ. P., Rule 15
fiduciary acts pending appeal validated, M. R. App. Civ. P., Rule 13
opinion to accompany remittitur, M. R. App. Civ. P., Rule 35(b)
substantial error required for reversal, M. R. App. Civ. P., Rule 14
Rules of Appellate Civil Procedure, Title 93, Chapter 3001
application of rules and statutes to appeals to supreme court, M. R. Civ. P., Rule 72
citation of rules, M. R. App. Civ. P., Rule 43(a)
effective date of rules, M. R. App. Civ. P., Rule 43(b)
exemption of special statutory proceedings from rules, M. R. App. Civ. P., Rule 42(a)
pending proceedings, application of rules to, M. R. App. Civ. P., Rule 43(b)
scope of rules, M. R. App. Civ. P., Rule 1
statutes superseded by rules, M. R. App. Civ. P., Rules 42(c), 43(c)
suspension of rules by supreme court, M. R. App. Civ. P., Rule 3
Service of papers filed in supreme court required on all parties, M. R. App. Civ. P., Rule 20(b)
personal service or mail, M. R. App. Civ. P., Rule 20(c)
proof of service, M. R. App. Civ. P., Rule 20(d)
Stay of judgment or order pending appeal, M. R. App. Civ. P., Rule 7(a)
judgments and orders not subject to stay, M. R. App. Civ. P., Rule 7(c)
perishable property, sale and deposit of proceeds, M. R. App. Civ. P., Rule 7(b)
Substantial rights of parties to be considered on appeal, M. R. App. Civ. P., Rule 14
Supersedeas bond to stay judgment or order pending appeal, M. R. App. Civ. P., Rule 7(a)
form for bond, M. R. Civ. P., Appendix of Forms, Form 23
justification of sureties on bond, M. R. App. Civ. P., Rule 8(b)
liability of surety on bond, enforcement, M. R. App. Civ. P., Rule 8(a)
Time allowed for proceedings in supreme court
computation of days, M. R. App. Civ. P., Rule 21(a)
extension of time allowed by court, M. R. App. Civ. P., Rule 21(b)
filing of appeal, M. R. App. Civ. P., Rule 5
mail service, additional time allowed after, M. R. App. Civ. P., Rule 21(c)
Tort actions against state, 83-703
Undertaking for costs on appeal, contents and filing, M. R. App. Civ. P., Rule 6(a)
justification of sureties on undertaking, M. R. App. Civ. P., Rule 8(b)
liability of surety on undertaking, enforcement, M. R. App. Civ. P., Rule 8(a)
United States Supreme Court, action on receipt of mandate from, M. R. App. Civ. P., Rule 35(c)
Verdict subject to review on appeal from judgment, M. R. App. Civ. P., Rule 2

APPEARANCE
Acts constituting appearance by defendant, 93-8505
Criminal cases, appearance of arrested person, duties of person who made arrest and of court, 95-901, 95-902
Jurisdiction of person acquired by voluntary appearance in court, M. R. Civ. P., Rule 4B(2)

APPORTIONMENT
Legislative apportionment, VI, 2 and 3
Representative apportionment, 43-106.2
Senatorial apportionment, 43-106.1

APPRENTICESHIP COUNCIL
Appointments and terms of members, 41-1201
Chairman and vice-chairman, 41-1201

References are to Title and Section numbers

APPRENTICESHIP COUNCIL (Continued)
Composition of council, 41-1201
Director and staff, appointment, 41-1201
Duties of council, 41-1202

ARBITRATION AND AWARD
Affirmative defense, M. R. Civ. P., Rule 8(c)
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A

ARBOR DAY
Date of observance, 75-2212

ARCHITECTS
Compensation of members of examining board, 66-109
Corporations for practice of architecture, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Examination fees, disposition, 66-108
Insurance against errors and omissions required on public contracts, 66-114
License fees, disposition, 66-109
Plans of public buildings, architect's seal and signature required, 66-114
Report of examining board to governor, 66-109
State building programs, appointment of architect, 82-3319
  restrictions on architectural work by state, 82-3320

ARRAIGNMENT
See CRIMINAL PROCEDURE, Arraignment, 95-1601 to 95-1608

ARRESTS
Appearance of arrested person, duties of person who made arrest and of court, 95-901, 95-902
Bail
  defendant taken to nearest judge to fix bail, 95-1105
  issuance of warrant for failure to comply with conditions, 95-1107
  peace officer, acceptance of bail, procedure, 95-1103, 95-1104
  sureties or surety company, arrest powers, 95-1115
Close pursuit act, 95-619
Complaint, requirements for issuance and service of warrant, 95-603
Corporations, issuance and service of summons, procedure on failure to appear, 95-615
Definitions, Code of Criminal Procedure, 95-601
Exemptions, persons privileged from arrest, 95-616
Fingerprints and description taken on felony arrest, 80-2003
  failure to furnish information to state, officer's salary withheld, 80-2004
Force permitted, 95-602
Indictment found, issuance of warrant, 95-1410
"Magistrate" defined, 95-208
Method of arrest, 95-602
Notice to appear, issuance, when authorized, form, failure to appear, 95-614
Oral order for arrest, authority of magistrate, 95-208
Peace officer, arrest by, 95-608
  assisting peace officer, powers of officer and duties of person commanded to aid officer, 95-609
  bail, acceptance of, 95-1103, 95-1104
  duties of officer, 95-604, 95-606
  release by officer of person arrested, when, 95-610
Private person, when arrest by authorized, 95-611
Radar arrest cases—See MOTOR VEHICLES, Radar arrests
Roadblocks, arrest at, 95-618
Search and seizure authorized as incident to arrest, 95-701
Summons, issuance, when authorized, form, service, 95-612
  definition of summons, 95-601
  failure to appear, issuance of warrant of arrest, 95-613
Time of making arrest, 95-607

ARRESTS (Continued)
Warrant of arrest
arrest without warrant, duties of peace officer, 95-606
release by officer, when, 95-610
bail, setting and accepting under warrant, 95-1104
complaint, requirements for issuance and service of warrant, 95-603
defective warrant, procedure, 95-605
definition, 95-601
duties of peace officer on arrest with warrant, 95-604

ARTS COUNCIL
Appointment and qualifications of members, 82-3602
Chairman and vice-chairman of council, 82-3603
Contracts for services and co-operative endeavors, 82-3608
Creation of council, 82-3601
Duties of council, 82-3606
Executive committee, selection, functions, 82-3604
Expenses of members, 82-3603
Fund-raising drives, deposit and use of proceeds, 82-3609
Gifts and donations, acceptance authorized, deposit and use, 82-3607
Officers and employees, compensation, 82-3605
Purpose of council, 82-3601
Terms of members, 82-3603

ASSAULTS
Second degree, definition, penalty, 94-602

ASSIGNMENT FOR BENEFIT OF CREDITORS
Bulk Transfer chapter inapplicable to assignments, 87A-6-103
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A

ASSIGNMENTS
Accounts, assignments subject to Uniform Commercial Code, 87A-9-102—See also SECURED TRANSACTIONS
Cause of action assigned, defenses available against assignee, 93-2802
Claims against state, assignment of, 83-901 to 83-904
Consumer loan act, wage assignments, 47-220
Contract right assignments subject to Uniform Commercial Code, 87A-9-102—See also SECURED TRANSACTIONS
Definition of term, 19-103
Wage assignments excluded from Uniform Commercial Code, 87A-9-104

ASSOCIATIONS
Business trusts, 15-2501 to 15-2508—See BUSINESS TRUSTS
Service of process on unincorporated associations, M. R. Civ. P., Rule 4D(2)

ASSUMPTION OF RISK
Affirmative defense, M. R. Civ. P., Rule 8(c)

ATTACHMENT
Affidavit filed to secure attachment before judgment, 93-4302
Availability of remedy before and during action, M. R. Civ. P., Rule 64
Compensation under occupational disease act exempt from, 92-1329
Document of title covering goods, surrender or injunction required for attachment, 87A-7-602
Game wardens' retirement benefits, exemption from attachment, 68-1420
Investment securities, levy against, 93-4307
Personal property subject to security interest, levy against, 93-4338
Range livestock, method of taking possession, 93-4344
filing of papers by county clerk, 93-4346
Release of attachment of real property where no proceedings taken in action, 93-4331.1
Sales under attachment validated despite defects, 93-5846
Summons, attachment at time of issuance, 93-4301

References are to Title and Section numbers

ATTACK

Post-attack resource management, 77-1501 to 77-1508—See WAR, Resource Management
Post-enemy-attack continuity in government, V, 46; 82-3801 to 82-3809—See WAR, Continuity in government

ATTORNEY GENERAL

Commission of attorney general recorded by supreme court, M. R. App. Civ. P., Rule 19(a)
Compromise and settlement of tort actions against state, power, 83-704
Constitutional questions litigated, notice to and intervention by attorney general, M. R. Civ. P., Rule 24(c)
Criminal investigator, 82-414 to 82-420—See CRIMINAL INVESTIGATOR
Health department, legal advice to, 69-4111
Oath of office recorded by supreme court, M. R. App. Civ. P., Rule 19(a)
Occupational disease act, duties under, 92-1343
Optometry board, representation in supreme court, 66-1315
Salary, 25-501
Securities act enforcement, 15-2021
Teletypewriter communications system for law enforcement, 82-3901 to 82-3906—See LAW ENFORCEMENT TELETYPEWRITER COMMUNICATIONS
Tort actions against state, responsibility for litigation on behalf of state, 83-704
Water resources board, duties as legal adviser, 89-103

ATTORNEYS

Annual license tax, 93-2010
  disposition of moneys collected, 93-2011
Arrest, attorneys privileged from arrest, when, 95-616
Attorney as justice of the peace, practice of law, limitation, 16-3605
Corporations for practice of law, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Criminal defendants, right to counsel, 95-1001 to 95-1006—See CRIMINAL PROCEDURE, Counsel, right to
Disbarment proceedings, witness fees in, 93-2020
Examination and admission to bar
  fees for examination and admission, 93-2015
  per diem of examining board members, 93-2014
Investment advice exempt from securities act, 15-2004
Judicial officers, restrictions on practice of law by, 93-902
Pleadings, signature, effect, M. R. Civ. P., Rule 11
Real estate brokers' act, exemption from, 66-1926
Service of process on attorney required, M. R. Civ. P., Rule 5(b)

AUCTION SALES

Bond of auctioneer, terms, 66-204
Bulk transfers at auction sale, procedure required for protection of creditors, 87A-6-108
Completion of sale, 87A-2-328
Memorandum of auctioneer binding bidder and seller, 66-202
  provisions not modified by Uniform Commercial Code, 87A-10-103
Nonresident auctioneers, reciprocal privileges, 66-203.1
Real estate brokers' act, auctioneer's acts exempt from, 66-1926

AUTOPSIES

Cases in which authorized, procedure, 69-5103 to 69-5106
Coroner, authority to require autopsy, when, 95-802
  liability of mortuary or physician limited, 95-813
Occupational Disease Act, autopsies under, 92-1318

B

BAIL

Amount of bail, how determined, 95-1110
  reduction or increase in amount, application for, 95-1111
Appeal
  bail after conviction, 95-1109

BAIL (Continued)
Appeal (Continued)
judge may admit defendant to bail, 95-1102
reversal of judgment, bail exonerated or money refunded, 95-2430
Arrest bond certificates, 95-1121 to 95-1123
Arrests
defendant taken to nearest judge to fix bail, 95-1105
failure to comply with bail or recognizance, issuance of warrant, 95-1107
peace officer, acceptance of bail, procedure, 95-1103, 95-1104
sureties or surety company, arrest powers, 95-1115
Attorney prohibited from furnishing bail, 95-1120
Authority to admit to bail, persons authorized, 95-1102
persons prohibited from furnishing bail, 95-1120
Bailable offenses, 95-1108
Conditions of bail bond, 95-1118
Deposits of cash, stocks or bonds for bail, 95-1112
Discharge of bail upon performance of conditions, 95-1116
Discharge of defendant upon allowance and acceptance, 95-1102
Forfeiture of bail, procedure, judgment, 95-1116
disposition of judgment and execution, 95-1117
Giving bail before another court or judge, duties of judge, 95-1105
Guaranteed arrest bond certificates, 95-1121 to 95-1123
Habeas corpus to obtain admission to, 95-2702
discharge of person detained, 95-2713
Initial appearance of arrested person, duty to inform of right to bail, 95-902
Judge may admit defendant to bail, 95-1102
Minor offenses, setting and accepting bail, 95-1103
New trial, provisions for bail, 95-1119
Not guilty judgment, defendant discharged from obligation of bail, 95-2202
Peace officer, acceptance of bail, procedure, 95-1103, 95-1104
Purpose of bail, 95-1101
Qualifications of bail, justification by sureties, challenge of bail or sufficiency of sureties, 95-1113, 95-1114
Real estate as bail, amount required, 95-1112
Recognizance, release authorized, duties of court, 95-1106
Revocation of bail, 95-1111
Substitution of bail, 95-1111
Sureties or surety companies, how bail furnished, 95-1112
Surrender of defendant, 95-1115
Traffic offenses, penalty assessment added to bail, 75-5305
Warrant of arrest, setting and accepting bail under, 95-1104

BAILORS AND BAILEES
Selling property unlawfully, 94-35-114

BANKRUPTCY
Bulk transfer sale chapter inapplicable to sale by trustee, 87A-6-103
Discharge as affirmative defense, M. R. Civ. P., Rule 8(c)
Real estate brokers' act inapplicable to trustees, 66-1926
Uniform Commercial Code supplemented by general principles of law, 87A-1-103

BANKS AND BANKING
Accounts excluded from chapter on secured transactions, 87A-9-104
Branch banks prohibited, 5-1028
Uniform Commercial Code does not change law, 87A-10-103
Capital stock required, amount and par value, 5-206
Certification of check, effect, 87A-3-411
Credit union provisions inapplicable to banks, 14-157
Deposits and collections
agency of collecting bank for owner of item, 87A-4-201
agreements on applicable state law, restrictions on, 87A-1-105
agreements to vary terms of chapter, 87A-4-103
altered items
customer's duty to report to bank, 87A-4-406

References are to Title and Section numbers

BANKS AND BANKING (Continued)
Deposits and collections (Continued)
altered items (Continued)
original amount, right to charge to depositor's account, 87A-4-401
waiver of defense against claim against prior parties, 87A-4-406
authenticity of third-party documents presumed, 87A-1-202
availability of deposits for withdrawal, time, 87A-4-213
blanks left in item, bank's right to charge as completed, 87A-4-401
branch office treated as separate bank, 87A-4-106
care required of collecting bank in collection and settlement, 87A-4-202
charge-back against provisional settlement for uncollected items, 87A-4-212
citation of Uniform Commercial Code chapter, 87A-4-101
clearinghouse rules, effect on rights and liabilities, 87A-4-103
commercial instrument payable through bank as authority to collect, 87A-3-120
Commercial Paper chapter subject to Bank Deposits and Collections chapter, 87A-3-103
conflict between chapters of Uniform Commercial Code, 87A-4-102
conflict of laws with respect to bank's liability, 87A-4-102
corresponding banks, collecting bank not liable for defaults of, 87A-4-202
course of dealing between parties, 87A-1-205
cut-off hour for handling of items and making of entries, 87A-4-107
damages for breach of warranty or engagement by collecting bank or customer, 87A-4-207
damages for failure to exercise ordinary care, measure, 87A-4-103
death of customer, effect on items in process of collection, 87A-4-405
deferred posting permitted to payor bank, 87A-4-301
definition of terms, 87A-4-104
"collecting bank," 87A-4-105
"depositary bank," 87A-4-105
general definitions in Uniform Commercial Code, 87A-1-201
index of definitions, 87A-4-104
"intermediary bank," 87A-4-105
"payor bank," 87A-4-105
"presenting bank," 87A-4-105
"process of posting," 87A-4-109
"remitting bank," 87A-4-105
delay by payor bank in returning item, liability for, 87A-4-302
delay permitted collecting bank in effort to secure payment, 87A-4-108
destruction of item in transit, collecting bank not liable for, 87A-4-202
direct transmission to payor authorized, 87A-4-204
dishonor of item, bank's liability when wrongful, 87A-4-402
dishonor of paper tendered in remittance, collecting bank not liable, 87A-4-211
documentary drafts
dealing with goods by collecting bank following dishonor of draft, 87A-4-504
delivery of documents to drawee on acceptance or payment, 87A-4-503
dishonor of draft, duty of collecting bank to transferor, 87A-4-501, 87A-4-503
lien of collecting bank on goods following dishonor of draft, 87A-4-504
"on arrival" drafts, time for presentment, 87A-4-502
presentment of draft and documents by collecting bank, 87A-4-501
endorsement supplied by depositary bank for customer, 87A-4-205
engagements of collecting bank and customer transferring item, 87A-4-207
excuses for delay by conditions beyond control of bank, 87A-4-108
extension of time permitted collecting bank in effort to secure payment, 87A-4-108
Federal Reserve regulations and operating letters, effect on rights and liabilities, 87A-4-103
final settlement of item
acts constituting final settlement, 87A-4-213
time of final settlement by remittance instrument or authorization to charge, 87A-4-211
foreign currency items, rate at which charged back on failure of collection, 87A-4-212
good faith required, 87A-1-203
identification of transferor bank, sufficiency of agreed method, 87A-4-206
incompetence of customer, effect on items in process of collection, 87A-4-405

References are to Title and Section numbers

BANKS AND BANKING (Continued)
Deposits and collections (Continued)
insolvency of collecting or payor bank, rights and preferences to item in process of collection, 87A-4-214
insolvent banks, deposits accepted by, 5-803
instructions from transferor of item, duty of collecting bank to follow, 87A-4-203
loss of item in transit, collecting bank not liable for, 87A-4-202
media of remittance acceptable by collecting bank, 87A-4-211
order of posting of accepted or paid items, 87A-4-303
overdraft, right of bank to charge to customer's account, 87A-4-401
"pay any bank" endorsement, effect, 87A-4-201
place of presentment of item to payor bank, 87A-4-204
posting process, steps enumerated, 87A-4-109
presentment of item by written notice to party to accept or pay, 87A-4-210
promptness in sending item for collection, factors considered, 87A-4-204
provisional nature of settlement given by collecting bank, 87A-4-201
refund of provisional settlement for uncollected item, right of collecting bank to obtain, 87A-4-212
reservation of rights by party while performing or accepting performance, 87A-1-207
restrictive endorsement not binding on intermediary or payor bank, 87A-4-205
return by payor bank of item provisionally settled, 87A-4-301
security interest of bank in collection item, 87A-4-208
separate office treated as separate bank, 87A-4-106
short title of Uniform Commercial Code chapter, 87A-4-101
stop payment order
duration of effectiveness of order, 87A-4-403
items in process of collection, effect against, 87A-4-303
loss from payment contrary to order, burden of proof, 87A-4-403
opportunity to bank prior to action with respect to item, 87A-4-403
subrogation of bank liable for loss to rights of other parties, 87A-4-407
subrogation of bank liable on stop payment order to rights of other parties, 87A-4-407
suspension of payments by collecting or payor bank, rights in item in process of collection, 87A-4-214
time after which bank not obligated to pay check, 87A-4-404
time allowed for required actions, 87A-1-204
collecting bank, time allowed to for action, 87A-4-202
return of provisionally settled item by payor bank, 87A-4-301
unauthorized signatures, customer's duty to report to bank, 87A-4-406
unpaid items, return to depositary bank by intermediary or payor bank, 87A-4-212
usage of banks, effect on rights and liabilities, 87A-1-205, 87A-4-103
value given by bank supporting status as holder in due course, 87A-4-209
warranties of collecting bank and customer, 87A-4-207
withdrawal of deposits, when available, 87A-4-213
Directors, increase in number, 5-217
articles of agreement to provide for increase, 5-201
Dissolution of bank, when unclaimed distribution presumed abandoned, 67-2206—See also PROPERTY, Unclaimed property
Drafts, power to accept, 5-1001
Drive-in and walk-up facilities permitted, 5-1028
Examination of bank, trust company or investment company, fee for, 5-908
Holidays, when closing permitted, 19-107
Insolvent banks
priority of payment of debts, 5-1114
restrictions on deposits accepted by, 5-803
Investment advice, exemption from securities act, 15-2004
Letters of credit, power to issue, 5-1001—See also LETTERS OF CREDIT
Public funds, deposit by county, city and town treasurers, 16-2618
Real estate loans, limitations on, 5-506
Reserves, superintendent's power to raise and lower reserves on demand deposits, 5-532
Retail installment sales act
compliance with provisions other than licensing required, 74-603
license not required under, 74-603

References are to Title and Section numbers

BANKS AND BANKING (Continued)
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
Securities exempt from securities act, 15-2013
Special examination by state examiner, fee, 5-910
Taxation
corporation license tax, state banks exempt until national banks taxable, 84-1501.4
offices in more than one county, assessment and apportionment of tax, 84-4606
Unclaimed deposits and funds, when presumed abandoned, 67-2202—See PROPERTY, Unclaimed property
Unclaimed funds, disposition, 5-1117

BARBERS AND BARBER SHOPS
Compensation of examining board members, 66-408
Moneys received by examining board, deposit, 66-407
Officers of examining board, 66-407
Report of examining board, 66-408

BASTARDY PROCEEDINGS
Complaint to determine paternity, persons who may file, 93-2901-2
Death of father, liability restricted to obligations accrued before, 93-2901-4
Effective date of act, 93-2901-11
Enforcement of financial obligations of father, 93-2901-2
Judgment against father, form and persons to whom payable, 93-2901-7
Jurisdiction of district court, 93-2901-5
Limitation of actions for past obligations, 93-2901-3
Married woman bearing child of another man, 93-2901-1
Obligations of father defined, 93-2901-1
Paternity determination on complaint, 93-2901-2
Postponement of trial until after birth of child, 93-2901-6
Reciprocal enforcement of support remedies, 93-2901-5
Rules of civil procedure, application, M. R. Civ. P., Rule 81(a), Table A
Security required of father for payment of judgment, 93-2901-8
Uniformity of interpretation of act, 93-2901-10
Venue of proceedings, 93-2901-9

BEDDING
Shoddy control, 69-4701 to 69-4707—See SHODDY

BENEVOLENT ASSOCIATIONS
See INSURANCE, Benevolent associations, 40-4901 to 40-4917

BERRIES
Standard packages for sale of berries, 90-615

BILLS OF EXCHANGE
See COMMERCIAL PAPER, 87A-3-101 to 87A-3-805

BILLS OF LADING
Actions based on shipment, time and manner of institution regulated by terms of bill or tariff, 87A-7-309
Altered bill enforceable according to original tenor, 87A-7-306
Attachment of goods covered by bill, procedure required, 87A-7-602
Authenticity of third-party documents presumed, 87A-1-202
Care required of carrier, 87A-7-309
Citation of Uniform Commercial Code chapter, 87A-7-101
Claims based on shipment, time and manner of presentation regulated by terms of bill or tariff, 87A-7-309
Commercial Paper chapter inapplicable to bills, 87A-3-103
Conflicting claims to goods, carrier compelling interpleader, 87A-7-603
Connecting carriers on through bills, liability, 87A-7-302
Count of packages, duty of carrier, 87A-7-301
Course of dealing between parties, application, 87A-1-205
Damages for loss or injury to goods, limitation by terms of bill or tariff, 87A-7-309

References are to Title and Section numbers

BILLS OF LADING (Continued)
Date on bill erroneous, liability of issuer for, 87A-7-301
Defenses defeated by negotiation of bill, 87A-7-502
Definition of terms, 87A-7-102
general definitions in Uniform Commercial Code, 87A-1-201
Delivery of goods by carrier
destroyed bill, 87A-7-601
good faith delivery exonerating carrier, 87A-7-404
lien lost for voluntary delivery, 87A-7-307
lien to be satisfied before delivery, 87A-7-403
lost bill, 87A-7-601
obligation of carrier to deliver, 87A-7-403
persons who may require delivery, 87A-7-403
stolen bill, 87A-7-601
surrender of document required before delivery, 87A-7-403
Description of goods guaranteed to issuer by shipper, 87A-7-301
Destination bills, issuance, 87A-7-305
Destroyed bills, obtaining delivery of goods, 87A-7-601
Diversion of goods on instructions of holder, 87A-7-303
consignee's interest defeated by diversion, 87A-7-504
Duplicate bill, rights and liabilities of parties under, 87A-7-402
Endorsement of bill
default by carrier or previous endorser, endorser not liable for, 87A-7-505
negotiation, when endorsement required for, 87A-7-501
nonnegotiable bill, effect of endorsement, 87A-7-501
transferee's right to require necessary endorsement, 87A-7-506
Federal law controlling over Commercial Code chapter, 87A-7-103
Forwarder of freight issuing bill, rights and obligations of parties, 87A-7-503
Good faith required, 87A-1-203
Interpleader of conflicting claims to goods, 87A-7-603
Irregularities in issue of bill, obligations of issuer unaffected, 87A-7-401
Judicial process against goods covered by bill, procedure required, 87A-7-602
Letter of credit requirements, law governing adequacy, 87A-7-509
Lien of carrier
charges covered by lien, 87A-7-307
delivery of goods causing loss of lien, 87A-7-307
delivery of goods, satisfaction of lien required for, 87A-7-403
enforcement of lien, procedure, 87A-7-308
persons against whom lien enforceable, 87A-7-307
refusal to deliver goods causing loss of lien, 87A-7-307
sale of goods to enforce lien, 87A-7-308
Livestock injury, prior law not modified by Uniform Commercial Code, 87A-10-103
Lost bills, obtaining delivery on, 87A-7-601
Misdescription of goods, liability of issuer for, 87A-7-301
Negotiability of bill, requirements for, 87A-7-104
notice of arrival of goods, effect on negotiability of term requiring, 87A-7-501
Negotiation of bill
defenses defeated by negotiation, 87A-7-502
delivery required for negotiation, 87A-7-501
endorsement, when required for negotiation, 87A-7-501
right of holder to require necessary endorsement, 87A-7-506
formal requirements for negotiation, 87A-7-501
rights acquired by holder to whom negotiation made, 87A-7-502
sets of parts, negotiation of bill issued in, 87A-7-304
title required by holder to whom negotiation made, 87A-7-502
warranties of negotiator, 87A-7-507
intermediary delivering bill, 87A-7-508
Nonreceipt of goods, liability of issuer for, 87A-7-301
Overseas shipment of goods, form of bill required, 87A-2-323
bills issued in sets of parts, 87A-7-304
Prior interest prevailing over interest represented by bill, 87A-7-503
Reconsignment of goods on instructions of holder, 87A-7-303
consignee's interest defeated by reconsignment, 87A-7-504
Regulatory laws unimpaired by Uniform Commercial Code, 87A-10-103
controlling over Commercial Code chapter, 87A-7-103

References are to Title and Section numbers

BILLS OF LADING (Continued)
Reservation of rights by party while performing or accepting performance, 87A-1-207
Sale contract requirements, law governing adequacy, 87A-7-509
Sale of goods to enforce carrier's lien, 87A-7-308
Security interest in bill, means of perfection, 87A-9-304
possession taken by secured party, 87A-9-305
Seller of goods reserving security interest in goods shipped, 87A-2-505
Sets of parts, liability on bills issued in, 87A-7-304
"Shipper's weight, load and count," meaning and protection accorded issuer, 87A-7-301
Short title of Uniform Commercial Code chapter, 87A-7-101
Stolen bills, obtaining delivery of goods, 87A-7-601
Stoppage in transit by seller of goods
indemnification by seller for losses and expenses, 87A-7-504
surrender of bill required, 87A-2-705
Substitute bill issued at another place, 87A-7-305
Through bills, responsibility for acts of connecting carriers, 87A-7-302
Time allowed for required actions, 87A-1-204
Transfer of bill
endorsement necessary to title, right of transferee to require, 87A-7-506
notification to carrier of transfer, adverse interest perfected before, 87A-7-504
rights acquired by transferee, 87A-7-504
sets of parts, negotiation of bill issued in, 87A-7-304
title acquired by transferee, 87A-7-504
warranties of transferor, 87A-7-507
intermediary delivering bill, 87A-7-508
Unaccepted delivery order, negotiation of bill defeating title based on, 87A-7-503
Unauthorized issuance of bill, obligations of issuer unaffected, 87A-7-401
Unknown goods, description on bill, 87A-7-301
Usage of trade, application, 87A-1-205
Warehouse receipt law, provisions included in but omitted from bills of lading law, 87A-7-105
Warranties by transferor of bill, 87A-7-507
intermediary delivering bill, 87A-7-508
Weighing of bulk freight, duty of carrier, 87A-7-301
Wrongfully procured bill, when defeated by prior interest, 87A-7-503

BIRTH
Certificates of birth, 69-4413 to 69-4423—See VITAL STATISTICS, Birth certificates
Judicial determination of date, application of rules of civil procedure to proceedings, M. R. Civ. P., Rule 81(a), Table A

BLIND
Public buildings constructed to accommodate blind persons, 69-3701 to 69-3719—See PUBLIC BUILDINGS, Handicapped persons, construction of buildings to accommodate

BOARDING HOMES
County operation of home, 16-1037
services provided at county-operated home, 16-1038
Fraud, obtaining accommodations with intent to defraud, penalty, evidence of intent, 94-1831
Lease of county property for home, 16-1036

BOARDS OF HEALTH
Local boards of health, 69-4501 to 69-4509—See HEALTH, LOCAL BOARDS OF
State board of health, 69-4103—See DEPARTMENT OF HEALTH, Board of health

BOILER INSPECTION
Advisory committee on boiler rules, 69-1501
New boiler installations, 69-1503
Special boiler inspectors employed by insurance companies, appointment, 69-1501

BOILERS
Engineer's license, fee, 69-1512
annual renewal, 69-1516

BOILERS (Continued)
Engineer's license, fee (Continued)
disposition of money, 69-1516
fee for renewal, 69-1516

BONDS AND UNDERTAKINGS
Bail in criminal proceedings, 95-1101 to 95-1123—See BAIL
Capitol improvement and repair bonds, 78-741 to 78-745—See STATE CAPITOL, Building improvement and repair
City and town officers and employees
adequacy of bond, determination, 6-603
amount of bonds, 6-602
commission and commission-manager governments, 6-608
companies authorized to write bonds, 6-604
competitive bids to be sought, 6-602
conditions in bond, 6-606
form of bonds, approval, 6-605
premiums, payment out of budget, 6-607
purchase of bonds by council or commissioners, persons covered, 6-601
County officers and employees, bonds covering
amount of bonds, determination, 6-204
adequacy supervised by state examiner, 6-205
commissioners to purchase bonds, 6-203
companies authorized to execute bonds, 6-206
competitive bids to be sought, 6-204
filing and recording, 6-208
form of bonds, approval, 6-208
group bonds permitted, 6-203
conditions and signature of bonds, 6-209
premiums, payment out of budget, 6-207
County printing contract, bond of contractor, 16-1231
Facsimile signatures of public officials—See PUBLIC OFFICERS AND EMPLOYEES, Facsimile signatures of public officials
Fees of secretary of state for receiving and recording, 25-102
Flood control bonds issued by counties and municipalities, 89-3312
Industrial development bonds, 11-4103 to 11-4107—See INDUSTRIAL DEVELOPMENT, Bonds
Issuance, transfer, and registration of investment securities, 87A-8-101 to 87A-8-406—See INVESTMENT SECURITIES
Limitation on indebtedness of cities, towns, townships, school districts or high school districts, XIII, 6
Long-range building program bonds, 79-2201 to 79-2205—See STATE CAPITOL, Long-range building program financing
Restaurant, bar and tavern wage protection bond, 41-2002 to 41-2010—See WAGES, Restaurant, Bar and Tavern Wage Protection Act
State officers and employees, bonds furnished by
amount of bonds, determination, 6-106
companies authorized to write bonds, 6-107
competitive bidding required, 6-106
controller to purchase bonds, 6-105
form of bonds, approval, 6-105
group bonds permitted, 6-105
judicial officers exempt from general provision, 6-105
legislative employees exempt from general provision, 6-105
premiums, proration and payment, 6-108
Wheat research and marketing, official bonds of division chief, deputy or assistant, 3-2916—See AGRICULTURE

BOULDER RIVER SCHOOL AND HOSPITAL
See also STATE INSTITUTIONS
Admissions to school
application by parent or guardian, investigation and procedure, 80-2304
application other than by parent or guardian, investigation and procedure, 80-2305
availability of room, admission subject to, 80-2306

References are to Title and Section numbers

BOULDER RIVER SCHOOL AND HOSPITAL (Continued)
Admissions to school (Continued)
records to accompany person admitted, 80-2306
residence requirement, 80-2303
temporary admissions to school, 80-2307
transportation costs paid by county, 80-2306
Cost of support, payment by resident or responsible person, 80-1601 to 80-1604
Discharge of persons from school, 80-2309
Division of mental retardation, school in, 80-2302
Fishing by inmates, license not required, 26-202.1
Industrial activities permitted, 80-1501 to 80-1503
Location of school, 80-2301
Management and control of school, 80-1401 et seq.
Mental retardation center at Glendive
capacity of center, 80-2311
services provided, 80-2310
supervision of center, 80-2312
Purpose of school, 80-2301
Residence required for eligibility for admittance, 80-2303
Superintendent to manage school, 80-2302
Temporary admissions to school, 80-2307
Transfer of patients from other institutions
children's center, 80-2106
Glendive center, 80-2312
juvenile facilities under department of institutions, 80-2209
Transfer of patients to Warm Springs state hospital or Galen state hospital, 80-2308

BOUNTIES
State bounty
employment of salaried hunters and trappers from bounty funds, 46-1912
expenditure of funds by livestock commission, 46-1903
fraudulent claims under bounty law, penalty, 46-1915
license money available for bounties, 46-1901
sale of furs, skins and specimens, disposition of proceeds, 46-1904
tax levy against livestock to provide moneys, 46-1914, 84-5214

BOXING, SPARRING AND WRESTLING
Report of ticket sales to athletic commission, 82-308
Tax on gross receipts from exhibitions, payment and deposit, 82-308

BREACH OF PROMISE
Acts within state not to give rise to cause of action, 17-1203
Cause of action abolished, 17-1202
Litigation and threat of litigation prohibited, 17-1204
Penalty for bringing action, 17-1206
Settlements and compromises void, 17-1205

BREAD
Standard loaves, 90-614

BROKERS
Securities brokers—See SECURITIES REGISTRATION, Broker-dealers

BUILDING AND LOAN ASSOCIATIONS
Accounts excluded from chapter on secured transactions, 87A-9-104
Credit union provisions inapplicable to associations, 14-157
Dissolution of association, when distribution presumed abandoned, 67-2206—See also PROPERTY, Unclaimed property
Examination by state examiner, fee for, 5-909
Real estate loans permitted, 7-113.1
Securities exempt from securities act, 15-2013
Special examination by state examiner, fee, 5-910
Unclaimed deposits and funds, when presumed abandoned, 67-2202—See also PROPERTY, Unclaimed property

References are to Title and Section numbers

BULK TRANSFERS

Agreements as to applicable state law, restrictions on, 87A-1-105
Application of proceeds to debts of transferor, 87A-6-106
Assignments for benefit of creditors not subject to chapter, 87A-6-103
Assumption of debt by transferee exempting from Bulk Transfer chapter, 87A-6-103
Auction sales, procedure required for protection of creditors, 87A-6-108
Authenticity of third-party documents presumed, 87A-1-202
Citation of Uniform Commercial Code chapter, 87A-6-101
Commercial paper transferred in bulk transfer not held in due course, 87A-3-302
Corporate reorganization proceeding not subject to chapter, 87A-6-103
Course of dealing between parties, application, 87A-1-205
Creditors entitled to protection under chapter, 87A-6-109
Definition of terms, 87A-6-102
    general definitions in Uniform Commercial Code, 87A-1-201
Equipment transfers, when subject to chapter, 87A-6-102
Exemption of transfers from chapter, 87A-6-103
Good faith required, 87A-1-203
Judicial sales, chapter inapplicable to, 87A-6-103
Lien foreclosure not subject to chapter, 87A-6-103
Limitation of actions and levies by creditors, 87A-6-111
List of creditors, preparation and filing or holding for inspection, 87A-6-104
Manufacturers subject to chapter, 87A-6-102
Merchandise enterprises subject to chapter, 87A-6-102
Notice to creditors of transfer
    contents of notice, 87A-6-107
    delivery to creditors, means permitted, 87A-6-107
    persons to whom sent, 87A-6-107
    required for transfer to be effective against creditors, 87A-6-105
Payments in good faith to particular creditors, credit to transferee or auctioneer for, 87A-6-109
Proceeds of sale, application to debts of transferor, 87A-6-106
Schedule of property transferred, preparation and filing or holding for inspection, 87A-6-104
Security interest, creation is not bulk transfer, 87A-9-111
Security transactions not subject to chapter, 87A-6-103
Short title of Uniform Commercial Code chapter, 87A-6-101
Statute of frauds applicable to sale of personal property other than goods and securities, 87A-1-206
Subsequent transfers by transferee with defective title, effect, 87A-6-110
Time allowed for required actions, 87A-1-204
Usage of trade, application, 87A-1-205

BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION

Assistance to local officers in establishing and maintaining local bureaus, 80-2006
Co-operation with and assistance to law enforcement officers, 80-2002
Co-operation with FBI and other states, 80-2005
Criminal record of person arrested for felony, information to law enforcement officer, 80-2003
Destruction of fingerprints and description on acquittal of person arrested, 80-2003
Files of identification information, procurement and maintenance by bureau, 80-2002
Fingerprints and other information to be furnished by law enforcement officers, 80-2003
    failure to provide information, salary withheld, 80-2004
Institutions to furnish identification material for files, 80-2002
Supervisor of bureau, appointment, 80-2001
Warden of state prison to supervise bureau, 80-2001

BUSINESS CORPORATION ACT

Actions by and against corporations
    involuntary dissolution, commencement of action, 15-2289
    survival of remedy after dissolution, 15-2298
Administration by secretary of state, 15-22-127
Annual report of domestic and foreign corporations required
    contents of report, 15-22-118
    existing corporations, filing report required, 15-22-136

References are to Title and Section numbers

BUSINESS CORPORATION ACT (Continued)
Annual report of domestic and foreign corporations required (Continued)
failure to file, penalty, 15-22-125
filing of report, 15-22-119
fee, 15-22-121
Appeal from ruling or decision of secretary of state, 15-22-129
Application of act
existing corporations, 15-22-136
foreign and interstate commerce, 15-22-137
Articles of dissolution—See Dissolution, articles of dissolution, below
Articles of incorporation
amendments
certificate of amendment, issuance by secretary of state, 15-2256
disapproval by secretary of state, appeal to district court, 15-22-129
procedure to amend, 15-2253
reorganization, amendment of articles, purposes, procedure, 15-2259
right to amend, 15-2252
vote of shareholders required, 15-2253
class voting of amendments, 15-2254
articles of amendment
certificate of amendment issuance by secretary of state, 15-2256
effect of certificate of amendment, 15-2257
fee for issuance, 15-22-121
contents, 15-2255
execution by corporation, 15-2255
filing of articles with secretary of state, 15-2256
fee for filing, 15-22-121
certificate of amendment, issued by secretary of state, effect, 15-2256, 15-2257
contents, 15-2248
definition, 15-2202
disapproval by secretary of state, appeal to district court, 15-22-129
fee for filing, 15-22-121
filing with secretary of state, 15-2249
foreign corporations, amendment to articles, filing, 15-22-109
greater voting requirements, 15-22-132
restated articles of incorporation, filing, certificate of restatement, issuance and effect of, 15-2258
fees for filing, 15-22-121
waiver of required notice, 15-22-123
Assessment of shares, existing corporations, provisions for levying of assessment, 15-22-136
Books and records, examination by shareholders, 15-2246
Bylaws, adoption, amendment or repeal, 15-2225
Capital
amount of stated capital, determination of, 15-2219
cancellation of reacquired shares, reduction of stated capital, 15-2262
cancellation of redeemable shares, reduction of stated capital, 15-2261
fee for filing statement of reduction of stated capital, 15-22-121
reduction of stated capital, proposal, procedure, 15-2263
"stated capital" defined, 15-2202
surplus and reserves, 15-2264
Certificate of incorporation, issuance by secretary of state, 15-2249
effect of issuance, 15-2250
fee for issuing, 15-22-121
Consolidation—See Merger or consolidation below
Corporate laws, application to business trust, 15-2508
Definitions, 15-2202
Directors
classification of directors, 15-2235
compensation, 15-2233
consent to action taken without a meeting, 15-22-134
elected at annual meeting of shareholders, 15-2234
voting of shares, 15-2231
executive and other committees, designation by board, authority, 15-2238
liability of directors in certain cases, 15-2242

BUSINESS CORPORATION ACT (Continued)
Directors (Continued)
meetings
consent to action taken without a meeting, 15-22-134
minutes of proceedings, 15-2246
notice of meeting, waiver, 15-2239, 15-22-133
organization meeting, 15-2251
place of holding, 15-2239
quorum of directors, 15-2237
number of directors, 15-2234
qualifications, 15-2233
quorum of directors, 15-2237
removal of directors, 15-2236
signing of false documents, penalty, 15-22-126
survival of remedy after dissolution, 15-2298
terms of office, 15-2234, 15-2235
vacancies occurring in board, how filled, 15-2236
Dissolution
appeal from disapproval by secretary of state, 15-22-129
articles of dissolution
contents, 15-2285
fee for filing, 15-22-121
filing of articles, 15-2286
tax clearance certificate, 15-2285
attorney general, notice from secretary of state as to corporations subject to involuntary dissolution, 15-2288
commencement of action and procedure, 15-2289
bulk transfer chapter of commercial code inapplicable to sales, 87A-6-103
continuation of corporate existence to wind up affairs after dissolution, 15-2279, 15-2298
involuntary dissolution
grounds, 15-2287
liquidation proceedings—See Liquidation below
notice to attorney general by secretary of state of corporations subject to dissolution, 15-2288
venue and process, 15-2289
license tax for final year, liability for, 84-1511
revocation of voluntary proceedings
act of corporation, 15-2282
consent of shareholders, 15-2281
effect of statement, 15-2284
execution of statement by officer of corporation, 15-2281, 15-2282
statement of revocation, filing, 15-2283
Small Business Tax Act option, agreement by shareholders to assume personal liability required, 84-1501.3
statement of intent to dissolve
consent of shareholders, 15-2276
effect of statement, 15-2279
execution by officers of corporations, 15-2277
fee for filing, 15-22-121
filing with secretary of state, 15-2278
procedure after filing of statement, 15-2280
survival of remedy after dissolution, 15-2298
unclaimed distribution, when presumed abandoned, 67-2206
voluntary dissolution
act of corporation, 15-2277
consent of shareholders, 15-2276
incorporators, action to dissolve corporation which has not commenced business, 15-2275
revocation of proceedings, fee for filing statement, 15-22-121
statement of intent to dissolve, 15-2278 to 15-2280
tax clearance certificate, 15-2285
Distributions from capital surplus, 15-2241
liability of directors for unlawful distribution, 15-2242
Dividends
closing of transfer book and fixing record date, 15-2228

References are to Title and Section numbers

BUSINESS CORPORATION ACT (Continued)
Dividends (Continued)
corporations engaged in exploiting natural resources, payment out of depletion reserves, 15-2240
cumulative dividends paid out of capital surplus, 15-2241
declaration of by board of directors, 15-2240
share dividends, 15-2240
stock issued as share dividend, surplus transferred to stated capital as consideration, 15-2217
unlawful declaration of dividends, liability of directors, 15-2242
Evidence, certificates and certified copies issued by secretary of state to be received, 15-22-130
Exchange of property or assets by corporation
disposition of assets in other than regular course of business, 15-2272
dissenting shareholders, right to dissent, 15-2273
regular course of business, 15-2271
Existence of corporation
continuation of corporate existence to wind up affairs after dissolution, 15-2279, 15-2298
expiration of existence, notice by secretary of state, 15-22-128
unauthorized assumption of corporate powers, liability, 15-22-135
Existing corporations continued, 15-22-136
assessment of shares, provisions for levying of assessment, 15-22-136
repeal of prior acts, effect, 15-22-139
Expenses of organization, reorganization and financing, payment, 15-2220
Fees
authority of secretary of state to collect, 15-22-120
filing documents and issuing certificates, enumeration of fees, 15-22-121
license fees
authority of secretary of state to collect, 15-22-120
domestic corporations, fees payable by, 15-22-123
foreign corporations, fees payable by, 15-22-124
miscellaneous charges of secretary of state, 15-22-122
Foreign corporations
actions by and against corporation, effect of failure to obtain certificate of authority, 15-22-117
admission of foreign corporation, 15-2299
annual report required, contents, 15-22-118
filing of report, 15-22-119
application of act to corporations heretofore authorized to do business in state, 15-22-116
articles of incorporation, amendment, filing, 15-22-109
fee for filing copy of amendment, 15-22-121
certificate of authority
amended certificate, requirements for securing, procedure, 15-22-111
application, fee for filing, 15-22-121
fee for issuing amended certificate, 15-22-121
application, contents, execution, 15-22-103
filing of application, 15-22-104
fee for filing application and issuance, 15-22-121
failure to obtain certificate, effect, 15-22-117
issuance of certificate, effect, 15-22-104, 15-22-105
limitations on issuance, 15-2299
required to transact business in state, 15-2299
revocation of certificate of authority
appeal from secretary of state, 15-22-120
grounds, 15-22-114
issuance of certificate of revocation, 15-22-115
existing corporations, duty to file annual report, 15-22-136
merger of foreign corporation authorized to do business in state, 15-22-110
fee for filing copy of articles of merger, 15-22-121
merger or consolidation of domestic and foreign corporations, procedure, 15-2270
name of corporation
change of name, 15-22-102
reservation of right to exclusive use, 15-2208
restrictions on contents of name, 15-22-101

References are to Title and Section numbers

BUSINESS CORPORATION ACT (Continued)
Foreign corporations (Continued)
powers of foreign corporation, 15-22-100
registered agent required, 15-22-106
change of registered agent, 15-22-107
registered office required, 15-22-106
change of registered office, 15-22-107
service of process on foreign corporation, 15-22-108
withdrawal of foreign corporation
application for withdrawal, contents, 15-22-112
filing of application, 15-22-113
certificate of withdrawal, requirements for issuance, 15-22-112, 15-22-113
fee for filing application and for certificate of withdrawal, 15-22-121
Incorporation
articles of incorporation—See Articles of incorporation above
expenses of organization, reorganization and financing, payment, 15-2220
organization meeting of directors, 15-2251
Incorporators
delivery of articles of incorporation to secretary of state, 15-2247
dissolution of corporation that has not commenced business, 15-2275
name and address to be included in articles of incorporation, 15-2248
number, 15-2247
organization meeting of directors, notice given by incorporators, 15-2251
Invalidity of part of act, effect of, 15-22-140
Leases of property of corporation
disposition of assets in other than regular course of business, 15-2272
regular course of business, 15-2271
Liability of persons assuming to act as a corporation without authority, 15-22-135
License fees, 15-22-123, 15-22-124
authority of secretary of state to collect, 15-22-120
Liquidation
assets due unknown creditor or shareholder, deposit with state treasurer, 15-2297
creditors, grounds for action for liquidation, 15-2290
filing of claims and notice, 15-2293
decree of dissolution
effect of decree, 15-2295
entry of decree by court, 15-2295
filing of decree, 15-2296
discontinuance of proceedings, 15-2294
grounds for liquidation of assets and business of corporation, 15-2290
jurisdiction of district courts, 15-2290
procedure
liquidation by court, 15-2291
voluntary dissolution, 15-2280
receivers
appointment by court, 15-2291
authority of receivers, 15-2291
compensation, 15-2291
expenses, payment from assets or proceeds of sales, 15-2291
qualifications, 15-2292
shareholders, grounds for action for liquidation, 15-2290
Merger or consolidation
appeal from disapproval by secretary of state, 15-22-129
articles of merger or consolidation, contents, filing, 15-2268
fee for filing, 15-22-121
certificate of merger or consolidation
fee for issuing, 15-22-121
issuance by secretary of state, 15-2268
operation and effect, 15-2269
return to surviving or new corporation by secretary of state, 15-2268
consolidation, procedure by board of directors, 15-2266
dissenting shareholders, right to dissent, 15-2273
filing of objections, payment for shares, procedure, 15-2274
domestic and foreign corporations merger or consolidation of, procedure, 15-2270
effect of merger or consolidation, 15-2269

References are to Title and Section numbers

BUSINESS CORPORATION ACT (Continued)
Merger or consolidation (Continued)
foreign corporation authorized to do business in state, filing of articles of merger, 15-22-110
merger, procedure by board of directors, 15-2265
plan for merger or consolidation, 15-2265, 15-2266
abandonment of plan, 15-2267
approval by board of directors, 15-2265, 15-2266
approval by shareholders, 15-2267
subsidiary corporation, 15-2268
vote of shareholders required, 15-2267
subsidiary corporation, merger by, plan, 15-2268
Mortgages, power to give
disposition of assets in other than regular course of busness, 15-2272
regular course of business, sale or mortgage of assets, 15-2271
Name of corporation
registration of name
fee for registration, 15-2209
procedure, 15-2209
renewal of registration, 15-2210
reservation of right to exclusive use, who may make, procedure, transfer, 15-2208
fee for filing application, 15-22-121
notice of transfer of reserved name, fee for filing, 15-22-121
restrictions on contents of name, 15-2207
Officers
authority and duties prescribed by the bylaws, 15-2244
election by board of directors, 15-2244
removal of officers, 15-2245
signing of false documents, penalty, 15-22-126
Organization of corporation—See Incorporation above
Penalties
effect of repeal of prior acts, 15-22-139
failure of corporation to file annual report, 15-22-125
signing of false documents by corporate officers or directors, 15-22-126
Pledges of assets by corporation
disposition of assets in other than regular course of business, 15-2272
regular course of business, 15-2271
Powers of corporation
acquisition and disposition of its own shares by corporation, 15-2205
general powers enumerated, 15-2204
ultra vires as a defense, 15-2206
Pre-emptive rights of shareholders, 15-2224
Purposes for which organization is allowed, 15-2203
Receivers—See Liquidation, receivers above
Redemption of stock
cancellation of redeemable shares by redemption or purchase, 15-2261
statement of cancellation, contents, filing, 15-2261
restriction on redemption or purchase of redeemable shares, 15-2260
voting redeemed shares, when prohibited, 15-2231
Registered agent required, 15-2211
change of registered agent, 15-2212
statement of change, fee for filing, 15-22-121
resignation of agent, 15-2212
Registered office required, 15-2211
change of registered office, 15-2212
statement of change, fee for filing, 15-22-121
Reorganization
amendment of articles of incorporation, purposes, procedure, 15-2259
bulk transfer chapter of commercial code inapplicable to sales, 87A-6-103
expenses of reorganization, payment, 15-2220
Repeal of prior acts, effect of, 15-22-139
Reports
annual report of domestic and foreign corporations required—See Annual report of domestic and foreign corporations required above
forms to be prescribed by secretary of state, 15-22-131

References are to Title and Section numbers

BUSINESS CORPORATION ACT (Continued)
Reservation of power to amend, repeal or modify, 15-22-138
Sale or mortgage of assets
disposition of assets in other than regular course of business, 15-2272
dissenting shareholders, right to dissent, 15-2273
filing of objections, payment for shares, procedure, 15-2274
regular course of business, 15-2271
Secretary of state
appeal from ruling or decision of secretary of state, 15-22-129
articles of incorporation, filing, 15-2249
articles of amendment, filing, 15-2256
cancellation of redeemable shares, filing statement, issuance of duplicate original, 15-2261
certificate of amendment of articles of incorporation, issuance, effect, 15-2256, 15-2257
certificate of incorporation, issuance, 15-2249
evidence, certificates and certified copies issued by secretary of state to be received, 15-22-130
fees and charges
authority to collect, 15-22-120
enumeration of fees for filing documents and issuing certificates, 15-22-121
license fees, 15-22-123, 15-22-124
miscellaneous charges, 15-22-122
foreign corporations
certificate of authority
amendment, procedure, 15-22-111
issuance, 15-22-104, 15-22-105
revocation, 15-22-114, 15-22-115
merger, filing of articles, 15-22-110
withdrawal, issuance of certificate, 15-22-112, 15-22-113
forms for reports to be prescribed by secretary of state, 15-22-131
involuntary dissolution, corporations, subject to notice to attorney general, 15-2288
merger or consolidation of corporations
issuance of certificate, 15-2268
operation and effect, 15-2269
subsidiary corporation, filing of articles, 15-2268
notice of expiration of corporate existence, 15-22-128
power to administer act, 15-22-127
reorganization, amendment of articles, filing, issuance of certificate, 15-2259
restated articles of incorporation, filing, certificate of restatement, 15-2258
voluntary dissolution of corporation
filing of articles of dissolution, 15-2286
revocation of voluntary proceedings, statement of revocation, filing, 15-2283, 15-2284
statement of intent to dissolve, filing with, 15-2278, 15-2279
Service of process on corporation, 15-2213
criminal offenses, service of summons, 95-615
foreign corporations, 15-22-108
Shareholders
action against corporation, defense of ultra vires, 15-2206
actions by shareholders, 15-2243
consent to action taken without a meeting, 15-22-134
definition, 15-2202
dissolution of corporation
act of corporation, vote of shareholders, 15-2277
revocation of voluntary proceedings
act of corporation, action by shareholders required, 15-2282
consent of shareholders, 15-2281
voluntary dissolution by consent of shareholders, 15-2276
examination of books and records of corporation, 15-2246
liability of subscribers and shareholders, 15-2223
liquidation of assets and business of corporation, grounds for action, 15-2290
meetings
annual meeting, 15-2226
closing of transfer books, 15-2228

References are to Title and Section numbers

BUSINESS CORPORATION ACT (Continued)
Shareholders (Continued)
meetings (Continued)
consent to action taken without a meeting, 15-22-134
minutes of proceedings, 15-2246
notice of meetings, 15-2227
waiver of notice, 15-22-133
place of holding, 15-2226
quorum, 15-2230
record date, fixing of, 15-2228
special meetings, 15-2226
voting list, 15-2229
merger or consolidation, rights of dissenting shareholders, 15-2273, 15-2274
pre-emptive rights of shareholders, 15-2224
sale or exchange of assets, rights of dissenting shareholders, 15-2273, 15-2274
survival of remedy after dissolution, 15-2298
voting list, 15-2229
voting of shares—See Voting powers of shareholders below
Shares—See Stock below
Short title of act, 15-2201
Stock
authorized shares, 15-2214
cancellation of shares
fee for filing statement of, 15-22-121
reacquired shares, cancellation of, procedure, effect, 15-2262
redemption or purchase, cancellation of redeemable shares, procedure, effect, 15-2261
certificates representing shares
form and contents, 15-2221
fractional shares, issuance of certificates for, 15-2222
scrip, issuance for fractional shares in lieu of certificate, 15-2222
classes, division into classes authorized, 15-2214
series, issued of preferred or special classes in series, 15-2215
consideration for shares, 15-2217
money, other property, labor or services, 15-2218
payment of the consideration, 15-2218
promissory notes and future services do not constitute payment, 15-2218
convertibility of shares, limitation on provisions relating to, 15-2214
corporation's right to acquire and dispose of its own shares, 15-2205
fractional shares, issuance of certificates for, 15-2222
payment for shares
calls for payment, 15-2216
consideration for shares, 15-2217
may be money, other property, labor or services, 15-2218
default in payment, procedure for collection of amount due, 15-2216
promissory notes and future services do not constitute payment, 15-2218
preferred or special classes, authority of corporation to issue, provisions relating to, 15-2214
issuance in series, 15-2215
reacquired shares, cancellation, procedure, effect, 15-2262
redeemable shares—See Redemption of stock above
scrip, issuance for fractional share in lieu of certificate, 15-2222
series of shares
fee for filing statement of establishment of series, 15-22-121
issuance of preferred or special classes in series, 15-2215
subscription for shares
calls for payment, 15-2216
default in payment, procedure for collection of amount due, 15-2216
liability of subscribers, 15-2223
treasury shares
consideration, 15-2217
voting of prohibited, 15-2231
voting of shares—See Voting powers of shareholders below
Stockholders—See Shareholders above

References are to Title and Section numbers

BUSINESS CORPORATION ACT (Continued)
Stock rights and options, 15-2218
Subsidiary corporations, merger, 15-2268
Surplus and reserves, 15-2264
Transfer books
closing of transfer books and fixing record date, 15-2228
voting list, preparation by officer having charge of books, damages for failure to prepare list, 15-2229
Treasury shares, voting of prohibited, 15-2231
Ultra vires as a defense, 15-2206
Unauthorized assumption of corporate powers, 15-22-135
Voting powers of shareholders
amendments to articles of incorporation
class voting on amendments, when holders entitled to vote as a class, 15-2254
vote by shareholders, 15-2253
authorized vote of each outstanding share, 15-2231
corporation-owned shares, voting prohibited, 15-2231
cumulative voting authorized, 15-2231
fiduciaries, voting of shares, 15-2231
greater voting requirements in articles of incorporation to control, 15-22-132
merger or consolidation, vote of shareholders required, 15-2267
pledged shares, voting powers of shareholder or pledgee, 15-2231
proxies, 15-2231
quorum at meetings, 15-2230
receivers, voting of shares standing in name of, 15-2231
redeemable shares, when not entitled to vote, 15-2231
trust, creation of voting trust authorized, 15-2232
voting list, 15-2229
Waiver of notice requirements, 15-22-133

BUSINESS TRUSTS
Classifications of business trusts, 15-2502
Commencement of business, when authorized, 15-2504
Corporate laws, application to business trust, 15-2508
Definition, 15-2501
Domestic business trust
certificate of organization, 15-2504
definition, 15-2502
required filings with the secretary of state, 15-2504
trust agreement, filing with secretary of state, 15-2504
amendments to trust instrument, 15-2505
construction of instrument, 15-2506
terms and conditions of instrument, binding effect, 15-2506
Foreign business trusts
definition, 15-2502
license to do business in state, when issued, 15-2504
required filings with the secretary of state, 15-2504
trust agreement, filing with secretary of state, 15-2504
amendments to trust instrument, 15-2505
binding effect of terms and conditions of instrument, 15-2506
construction of instrument, 15-2506
Form of association authorized, 15-2503
Powers and authority of business trusts, 15-2506
Secretary of state
certificate of organization, issuance to domestic business trust, 15-2504
copies of trust agreements, filing with secretary of state, 15-2504
amendments to trust instrument, 15-2505
license to foreign business trust to do business in state, when issued, 15-2504
Taxation of business trust, 15-2507

BUTCHERS AND MEAT PEDDLERS
Inspection and marking of hides of slaughtered cattle
emergency or custom slaughter without live inspection, 46-503
livestock sanitary board inspection in lieu of sheriff's inspection, 46-503

References are to Title and Section numbers

BUTCHERS AND MEAT PEDDLERS (Continued)
Meat markets, 27-611 to 27-625—See FOOD AND DRUGS, Food service establishments
Persons exempted from procuring license for having meat inspected or stamped, 46-504

C

CAMPGROUNDS
See TOURIST CAMPS, 69-5601 to 69-5607

CAPITAL PUNISHMENT
Appeals, stay of execution, 95-2406
Execution of death sentence, procedure, 95-2303
Mental fitness of defendant, determination of, proceedings, 95-2304, 95-2305
Pregnant female, proceedings, 95-2306, 95-2307

CAREY LAND ACT BOARD
Fund abolished, 79-416
Money and appropriations transferred to water conservation board, 89-103.6
Powers transferred to water conservation board, 89-103.4
Records and property transferred to water conservation board, 89-103.5

CARRIERS
Common carrier contract modifying carrier's rights and duties, effect, 8-709
Pipeline carriers, 8-201 to 8-207, 8-209, 8-210—See PIPELINES

CEMETERIES
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a) Table A

CENTER FOR THE AGED
Convalescent release of patients, 80-2503
Cost of support, payment by resident or responsible person, 80-1601 to 80-1604—See STATE INSTITUTIONS, Cost of support of residents
Discharge of patients, 80-2503
Industrial activities permitted, 80-1501 to 80-1503—See STATE INSTITUTIONS, Industrial activities permitted
Location of center, 80-2501
Management and control of center, 80-1401 to 80-1409—See STATE INSTITUTIONS, Department of institutions
Purpose of center, 80-2501
Transfer of patients to and from other institutions, 80-2502
Galen state hospital, 80-1703

CERTIORARI
Real estate commission, writ of district court for appeal from, 66-1939
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A
Supreme court proceedings, M. R. App. Civ. P.—See SUPREME COURT, Original proceedings in supreme court

CESSPOOLS
Cleaning of cesspools, 69-5401 to 69-5408—See SANITARY LICENSEES

CHANGE OF NAMES
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A

CHANGE OF VENUE
Procedure for change in civil cases, M. R. Civ. P., Rule 12(b)
Procedure for change in criminal cases, 95-401, 95-1710
justices' and police courts, 95-2003

CHECKS
See COMMERCIAL PAPER, 87A-3-101 to 87A-3-805

References are to Title and Section numbers

CHILDREN AND MINORS

Abandonment of child as felony, 94-304
Abuse of children, reports required of physicians and others, 10-902
evidentiary use of report not subject to privilege, 10-905
immunity from liability of person making report, 10-904
investigation and prosecution by county officials, 10-903
policy declaration, 10-901
Borrowing of money for educational expense, capacity of minors, 64-106.1
Causing, contributing to or permitting law violations by children, penalty, 10-617
Correctional facilities, establishment, control and management by department of institutions, 80-1410 to 80-1412—See STATE INSTITUTIONS, Juvenile facilities
Day care facilities, licensing and regulation, 10-801 to 10-811—See DAY CARE FACILITIES
school districts for child care institutions, 75-5501 to 75-5508—See SCHOOLS, School districts, child care institution
Delinquent children
commitment to state institution, form of order, 10-612
definition, 10-602
institutional laws not repealed by act, 10-632
reception and evaluation center, authority to commit to, 10-611.1
Dependent and neglected children
commitment or other disposition of child, 10-509
cost of care and maintenance
hearing and order requiring parent to pay, 10-507
investigation of ability of parents to pay, 10-506
state and county payments of cost, 10-524
suspension of sentence on giving of bond by responsible person, 10-512
hearing on disposition of child, 10-504
Firearms, permitting use by minors prohibited, 94-3579
Galen state hospital, juvenile reception and evaluation center, 80-1704
Health information given to state department or medical association, privilege, 69-4115
Illegitimate children, support obligations of father, 93-2901-1 to 93-2901-11—See BASTARDY PROCEEDINGS
Interstate compact on juveniles
additional procedure for return of runaway juveniles, 10-1006
administrator, 10-1002
financial obligations, discharge, 10-1004
ratification, text, 10-1001
responsibilities of state departments, agencies and officers, 10-1005
supplementary agreements by compact administrator, 10-1003
Lewd and lascivious acts upon children, penalty, 94-4106
Neglect of child, report required, 10-901 to 10-905—See Abuse of children above
Nonsupport as felony, 94-304
Nutrition program in schools, 75-4801 to 75-4809—See SCHOOLS, School lunches
Phenylketonuria test required at birth, 69-4116
Representation in actions by and against, M. R. Civ. P., Rule 17(c)
Service of process on minors, M. R. Civ. P., Rule 4D(2)
Unlawful operation of motor vehicle by child under 18
court learning of unlawful operation, action which may be taken after hearing or investigation, 32-21-165
exclusive jurisdiction of district court, 32-21-163
impounding of vehicle, when, 32-21-163
penalty, 32-21-163
summoning of child, 32-21-164

CHILDREN'S CENTER

Commitment of child to center, records to accompany child, 80-2103
Cost of support, payment by resident or responsible person, 80-1601 to 80-1604—See STATE INSTITUTIONS, Cost of support of residents
Discharge of child from center, 80-2104
Fishing by inmates, license not required, 26-202.1
High school students attending Twin Bridges, state payments for, 75-4230
Incorrigible child, commitment to vocational school or industrial school, 80-2105

References are to Title and Section numbers

CHILDREN'S CENTER (Continued)
Industrial activities permitted, 80-1501 to 80-1503—See STATE INSTITUTIONS Industrial activities permitted
Location of center, 80-2101
Management and control of center, 80-1401 to 80-1409—See STATE INSTITUTIONS, Department of institutions
Medical examination before commitment of child to center, 80-2103
Mentally ill or retarded child, transfer to state hospital or state training school and hospital, 80-2106
Purpose of center, 80-2101
Superintendent to manage center, 80-2102
Transfer of children to other institutions
Boulder river school and hospital, 80-2106
juvenile facilities of department of institutions, 80-2105
Warm Springs state hospital, 80-2106
Truants, commitment to center, 75-3002
University aid to children resident at center, 80-2107

CHIROPODISTS
Compensation of board members, 66-608
Corporations for practice of chiropody, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Disability insurance, freedom of choosing physician under disability insurance, 40-4108 scope of practice not enlarged, 40-4109
Examination of applicants for license, 66-603
Expenses of board of examiners, payments, 66-608
Moneys collected by board, disposition, 66-607
Reciprocal license without examination, fee, 66-603

CHIROPRACTORS
Corporations for practice of chiropractic, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Disability insurance, freedom of choosing physician under disability insurance, 40-4108 scope of practice not enlarged, 40-4109
License applicants, examination, 66-506
Moneys received by board of examiners, disposition and use, 66-513
Per diem of members of board of examiners, 66-513

CHURCHES
Religious corporation sole, 15-2401 to 15-2413—See RELIGIOUS CORPORATION SOLE ACT
Sanitary inspections and correction of conditions by boards of health, 69-4118

CIGARETTE SALES
Actions for enforcement of act, 51-313
Competitive pricing in good faith permitted, 51-308
Contracts in violation of law void, 51-309
Damage actions for violation of act, 51-313
Definition of terms, 51-303
Enforcement powers of board of equalization, 51-314
Hearings by board on violations of act, 51-314
Injunction to prevent violations of act, 51-313
Judicial review of board actions, 51-314
Legislative findings, 51-301
Licenses and permits, revocation or suspension for violations of act, 51-314
Penalty for violations, 51-304
Policy of state, 51-301
Price-cutting as evidence of intent to injure competitor, 51-304
Rules and regulations for enforcement of act, 51-314
Sales below cost prohibited, 51-304
clearance sales exempt, 51-307
combination sales, determination of cost in, 51-306
competitive pricing exempt, 51-308
concealment of true cost as bearing on good faith, 51-310
customary trade practices as evidence of cost, 51-310

CIGARETTE SALES (Continued)
Sales below cost prohibited (Continued)
damaged merchandise, sale exempt, 51-307
definitions of cost, 51-303
fiduciary sales exempt, 51-307
isolated transactions exempt, 51-307
judicial sales exempt, 51-307
liquidation sales exempt, 51-307
promotional merchandise not considered in cost, 51-310
purchases outside ordinary trade channels not considered in determining cost, 51-311
survey evidence, use in determining cost, 51-312
wholesalers, definition of cost in sales between, 51-305
Short title of act, 51-302
Surveys to determine lowest cost, 51-312
competitive prices, use of survey in determining, 51-308
Unlawful practices enumerated, 51-304

CITIES AND TOWNS
Airports, establishment, 1-801 to 1-803—See AERONAUTICS, City and county establishment of airports
Aldermen
residence requirements for eligibility, 11-714
salaries, 11-725
All-purpose exclusive tax levy, 84-4701.1 to 84-4701.6—See TAXATION, Levy of taxes, all-purpose exclusive levy
Ambulance service
establishment authorized, 69-3601
joint service authorized, 69-3601
methods of operation, 69-3602
previously existing service unaffected, 69-3603
Annexation of contiguous platted tracts or other parcels of land, procedure, 11-403
Bonds, official
adequacy of bond, determination, 6-603
amount of bonds, 6-602
commission and commission-manager governments, 6-608
companies authorized to write bonds, 6-604
competitive bids to be sought, 6-602
conditions in bond, 6-606
form of bonds, approval, 6-605
premiums, payment out of budget, 6-607
purchase by council or commissioners, persons covered, 6-601
Bridges within municipalities, construction and maintenance, 32-2902
police regulation, 32-2905
Buildings constructed to accommodate handicapped persons, 69-3701 to 69-3719—See PUBLIC BUILDINGS, Handicapped persons, construction of buildings to accommodate
City attorney, salary, 11-729
City-county building, acquisition or construction authorized, 11-4201
bonding authority undiminished, 11-4203
contracts between city and county, 11-4202
Clerk, salary, 11-731
Commission-manager plan of government
compensation of commissioners and mayor, 11-3248
primary election for commissioners, 11-3215
Contracts
advertising letting of, 11-1202
awarding, 11-1202
emergency contracts, when authorized, 11-1202
exemptions from act, 11-1202
installment payments, 11-1202

CITIES AND TOWNS (Continued)
Contracts (Continued)
preference to Montana bidders
federal aid projects exempt, 82-1926
percentage differential, 82-1924
provision in contracts for preference to Montana materials and labor, 82-1926
residence, definition, determination of, 82-1925, 82-1925.1
submission to electors at election, when required, 11-1202
County road machinery, use permitted, 32-2807
Deposit of public funds by treasurer, 16-2618
Disaster emergency tax, city-county
council meeting, 11-4303
definitions, 11-4301
determination of disaster, resolution of disaster committee, 11-4302
levy of tax to cover expenses, 11-4305
resolution stating emergency, 11-4304
surplus held in separate fund, 11-4306
Ditches, municipal regulation, 11-4001 to 11-4006
declaration of nuisance, 11-4002
investigative powers of governing body, 11-4003
irrigation ditches exempt, 11-4006
notice to close and fill ditch, 11-4004
protective devices, owner providing, 11-4005
purpose of act, 11-4001
Elections
registration of electors, 11-715
residence requirements for electors, 11-716
Electrical installations, municipal regulation, 66-2818
Employees, hours of work of salaried personnel, 59-510(2)
Examination by state examiner, fees, 5-905
Examination of accounts by state examiner, 82-1008
Fire departments
fire department relief associations
investment of surplus funds, 11-1914
pensions payable
disability pension, 11-1926
service pension, 11-1925
widows' and orphans' pensions, 11-1927
premium tax collected from insurers
amount of tax, 11-1919
estimates of payments into treasury fund, 11-1920
payment by state treasurer, 11-1921
risk covered by taxable premiums, 11-1919
tax levy for disability and pension funds, 11-1912
mutual aid agreements authorized, 11-1901
wages of firemen, longevity pay requirement based on statutory minimum, 11-1932.1
Fire protection in unincorporated towns
disability and insurance benefits of firemen
administration of act by industrial accident board, 11-2026
allowance and payment of claim by industrial accident board, 11-2025
benefits allowable, 11-2023
claims for compensation, filing and procedure, 11-2024
earnings of money in earmarked revenue fund, 11-2028
payment of claims, 11-2025
premium tax paid into earmarked revenue fund, 11-2030
qualification for benefits, 11-2023
reports to governor by retirement system, 11-2029
fire districts
change of boundaries, 11-2008
contracts with cities and towns and private services for fire protection, 11-2008
creation, 11-2008
dissolution, 11-2008
trustees, 11-2010
powers, 11-2010

References are to Title and Section numbers

CITIES AND TOWNS (Continued)
Fire protection in unincorporated towns (Continued)
fire insurance premium tax deposited into volunteer fireman's compensation fund, amount, 11-2030
mutual aid agreements, 11-2010
premium tax paid into earmarked revenue fund, 11-2030
training program conducted by chief, 11-2007
Flood control, 89-3301 to 89-3313—See FLOOD CONTROL AND WATER CONSERVATION
Gasoline tax exemption permits, issuance and use, 84-1802
Group insurance for officers and employees, 11-1024
Health, board of, 69-4501 to 69-4509—See HEALTH, LOCAL BOARDS OF
Highways bypassing municipality, consent of governing body required, 32-1628
Highways through municipality, cost of construction and maintenance, 32-1627
Indebtedness
electors at elections concerning
persons entitled to vote, 11-2310
registration, 11-2310
extraordinary levies to pay bonded indebtedness, 84-4701.6
form and execution of bonds, 11-2316
limitation on incurring, XIII, 6
power to incur, 11-966
purposes for which indebtedness may be incurred, 11-966
Industrial development projects, 11-4101 to 11-4110—See INDUSTRIAL DEVELOPMENT
Interlocal co-operation, 16-4901 to 16-4904—See INTERLOCAL CO-OPERATION
Investment of surplus bonds in warrants, government securities and bank deposits, 11-1310
Limitation on indebtedness, XIII, 6
Mayor
qualifications for office, 11-710
salary, 11-725
Mental health facilities, establishment by division of mental hygiene, 80-2406
Motor vehicle yards, power to regulate, 11-918
Officers, residence requirements, 11-713
Off-street parking facilities
acquisition and construction, power of municipality, 11-986
funding or refunding bonds, 11-3721
indenture for security of bonds, 11-3714
Open meetings of public agencies
legislative intent, 82-3401
meetings to be open, exceptions, 82-3402
minutes to be available for public inspection, 82-3403
Ordinances, technical codes, adoption by reference, 11-1102
Parks, donation of county land for, 16-1131
Planning and zoning—See PLANNING AND ZONING
Plats and surveys, vacation of recorded plat, 11-616
Police department
appointment of commission in third class cities, when required, 11-1804.1
appointment of persons to do police duty who are not members of police department, authority of mayor, 11-1806
discharge of policemen in third class city when police commission established, 11-1804.1
fingerprints taken on felony arrest, 80-2003
salary of officer withheld on failure to furnish information, 80-2004
fund for payment of officers on reserve list, 11-1823
tax levy, 11-1823
identification bureaus, assistance by state bureau in establishing, 80-2006
law enforcement teletypewriter communications committee, membership of chiefs of police, 82-3902
qualifications, enumeration of qualifications of policemen, 11-1814
state payments to municipalities with police departments
amount of annual payment, 11-1834
insurance premium tax as source of payments, 11-1835

References are to Title and Section numbers

CITIES AND TOWNS (Continued)
Police department (Continued)
state payments to municipalities with police departments (Continued)
retirement reserve fund, credit of payments to, 11-1836
use of funds in municipalities not subject to retirement law, 11-1837
suspension of policemen by mayor or chief of police
appeal, 11-1806
authority, 11-1806
limitation on length of suspension, 11-1806
wages of members, longevity pay requirement based on statutory minimum, 11-1832.1
Police judge, salary, 11-726
Post-enemy-attack, continuity in government, V, 46; 82-3801 to 82-3809—See WAR, Continuity in government
Records of fiscal transactions, destruction after period of years, 59-516
Retirement act applicable on application by employee, 68-301
Revenue bonds
advertisement of bond issue, 11-2404
authorization of bond issue, 11-2404
definition of terms, 11-2402
election to authorize bond issue, 11-2404
negotiability of bonds, 11-2404
refunding revenue bonds, terms, issue, and disposition of proceeds, 11-2414
terms of bonds, 11-2404
Road fund, sources, disposition and use, 53-122
flood control project, use for, 89-3308
Rules of civil procedure, application to special statutory proceedings, M. R. Civ. P., Rule 81(a), Table A
Service of process on cities and towns, M. R. Civ. P., Rule 4D(2)
Sidewalks, curbs and gutters, construction without improvement district, 11-2226
Soil and water conservation districts
appointment of supervisors, 76-107
definition of municipality as "land occupier," 76-103
Special examination by state examiner, fee, 5-910
Special improvement districts
bonds and warrants
form, 11-2231
provisions, 11-2231
redemption, 11-2231
refunding of revenue bonds, 11-2218
revenue bonds for water and sewer systems, 11-2218
signing, 11-2231
investment of interest and sinking fund moneys, 11-2288
notice of resolution of intention, contents, persons to whom given, 11-2204
off-street parking and pedestrian malls
assessments and bonds, 11-2214.2
authority to create improvement districts, 11-2201
bonds, authority to issue, 11-2214.1
leasing of real property, 11-2214.4
payment of assessments, 11-2214.3
resolution of intention, publication and adoption, 11-2214.5
purposes for which authorized, 11-2202
warrants and bonds, form, 11-2231
Taxation, all-purpose exclusive levies authorized, 84-4701.1 to 84-4701.6
Tax levy to pay flood control indebtedness, 89-3312
Third class cities, appointment of police commission upon request of policemen, 11-1804.1
Treasurer, salary, 11-728
Urban renewal law
"agency" defined, 11-3901
annual report of urban renewal agency, 11-3916
bidding upon disposition of real property, 11-3909
"blighted area" defined, 11-3901
blighted areas, finding of public interest in, 11-3902

CITIES AND TOWNS (Continued)
Urban renewal law (Continued)
bonds
bonds issued do not constitute an indebtedness within meaning of constitutional or statutory debt limitations, 11-3910
definition, 11-3901
general credit of municipality not to be pledged, 11-3910.
payment, 11-3910
power to issue, 11-3910
resolution authorized, 11-3910
sale, terms, 11-3910
bonds as legal investments, 11-3911
borrowing power, 11-3907
clearance and redevelopment of blighted areas, inclusion in program, 11-3904
"clerk" defined, 11-3901
contract powers of municipality, 11-3907
cooperation by other public bodies, 11-3913
definitions, 11-3901
disclosure of interest in property within area, duty of public officers, 11-3918
discrimination because of race, creed, color or national origin prohibited, 11-3917
election, submission to electors for approval of plan, 11-3906
eminent domain
compensation, 11-3908
power of municipality, 11-3908
exercise of powers by municipality itself or by agency or department or other officers, 11-3915
fair value in sales or leases by municipality, 11-3909
"federal government" defined, 11-3901
findings required before exercise of powers, 11-3905
interest, direct or indirect in project or property by public officials, commissioners or employees prohibited, 11-3918
investment of project funds, 11-3907
legislative finding and declaration of necessity for act, 11-3902
"local governing body" defined, 11-3901
"mayor" defined, 11-3901
"municipality" defined, 11-3901
"obligee" defined, 11-3901
operation and maintenance of real property, power of municipality, 11-3909
"person" defined, 11-3901
plans, powers concerning, 11-3907
powers additional and supplemental to other powers conferred by law, 11-3919
powers of municipality, enumeration, 11-3907
prevention of spread of blight into areas, inclusion in program, 11-3904
private enterprise, encouragement of, 11-3903
program for, 11-3904
property exempt from taxes, termination of exemption upon sale, lease or disposition, 11-3912
property, power of municipality to sell, lease or transfer, 11-3909
"public body" defined, 11-3901
"public officer" defined, 11-3901
purchasers or lessees of property, obligation to comply with uses specified in urban renewal plan, 11-3909
"real property" defined, 11-3901
"redevelopment" defined, 11-3901
"rehabilitation" defined, 11-3901
rehabilitation of blighted areas, inclusion in program, 11-3904
resolution of required findings, 11-3905
restrictions in instruments of conveyance to private purchaser or lessee, authority, 11-3909
short title of act, 11-3920
surveys and appraisals, power to enter buildings and property for, 11-3907
tax exemption of property, termination of exemption upon sale, lease or other disposition, 11-3912
title of purchaser, 11-3914

CITIES AND TOWNS (Continued)
Urban renewal law (Continued)
urban renewal agency
annual report, 11-3916
commissioners
appointment, 11-3915
expenses, 11-3916
meetings, 11-3916
removal, 11-3916
term of office, 11-3916
definition, 11-3901
determination that agency shall exercise powers, 11-3915
employees, 11-3916
powers, 11-3915
"urban renewal area" defined, 11-3901
urban renewal plan
definition, 11-3901
hearing on, 11-3906
notice of hearing on, 11-3906
preparation, who may prepare, 11-3906
submission to electors at election, 11-3906
submission to planning commission of municipality, 11-3906
urban renewal project
approval by local governing body, 11-3906
definition, 11-3901
determinations required, 11-3906
modification, 11-3906
workable program, 11-3904
Warrants, investment of municipal funds in, 11-1310
Water conservation, 89-3301 to 89-3313—See FLOOD CONTROL AND WATER CONSERVATION
Water, furnishing to industries and persons outside city, 11-1001
Winter work programs, 41-1901 to 41-1907—See WINTER WORK PROGRAMS

CITY AND COUNTY CONSOLIDATION
Fire districts preserved, 11-3523
Firemen's disability and pension funds, rights preserved, 11-3524
Firemen, tenure, 11-3524
Police officers, tenure, 11-3518
Police reserve fund, vested rights preserved, 11-3518
Voluntary fire departments preserved, 11-3523

CIVIL DEFENSE
Post-attack resource management, 77-1501 to 77-1508—See WAR, Resource management
Post-enemy-attack continuity in government, V, 46; 82-3801 to 82-3809—See WAR, Continuity in government

CIVIL PROCEDURE
Federal rules, adoption, M. R. Civ. P., Rules 1 to 86
administrative bodies, act not to affect powers concerning rules governing practice, 93-228
adoption by legislature before rules effective, 93-229
amendment of rules, procedure, M. R. Civ. P., Rule 86(a)
appendix of forms, M. R. Civ. P., Appendix of Forms
changes, amendments and additional rules, procedure for accomplishing, 93-230
citation of rules, M. R. Civ. P., Rule 85
commission
appointment, 93-222
duties, 93-222
expenses of members, 93-232
number of members, 93-222
organization, 93-233
records, 93-233
secretary-stenographer, appointment, 93-231

References are to Title and Section numbers

CIVIL PROCEDURE (Continued)
Federal rules, adoption (Continued)
commission (Continued)
selection of members, 93-223
services of research agency, power to employ, 93-231
forms applicable under rules, M. R. Civ. P., Rule 84, Appendix of Forms
local rules of practice, authority for courts to adopt so long as not in conflict with promulgated rules, 93-227
proposed rules
distribution to bench and bar for consideration and suggestions, 93-224
preparation, 93-224
purpose of act, 93-221, M. R. Civ. P., Rule 1
scope of rules, M. R. Civ. P., Rule 1
statutory proceedings, applicability of rules to, M. R. Civ. P., Rule 81(a), Table A
tentative final draft
hearing on, 93-226
submission to supreme court, 93-225
Local rules of practice, authority to adopt, 93-227, 93-2801-4, M. R. Civ. P., Rule 83
Rules of Appellate Civil Procedure, Title 93, Chapter 3001
Rules of Civil Procedure, Title 93, Chapter 2701
Supreme court power to prescribe rules, 93-2801-1
administrative practice rules unaffected, 93-2801-5
advisory committee, appointment, 93-2801-2
continuation of existing rules until modified, 93-2801-6
effective date of rule changes, 93-2801-7
legislative power reserved, 93-2801-8
petitions of professional associations concerning rules, 93-2801-3
proposed rules, distribution to bench and bar, 93-2801-3
scope of rules within power of court, 93-2801-1
substantive rights of litigants not to be affected, 93-2801-1
Tort actions against state, 83-701 to 83-707—See STATE OF MONTANA, Tort actions against

CIVIL RIGHTS
County parks, discrimination in employment prohibited, 16-4806
Freedom from discrimination as civil right, 64-301
definition of terms, 64-302
discriminatory practices as misdemeanor, 64-303
Hospitals and facilities constructed with public funds, discrimination prohibited, 69-5313
Mental health programs, discrimination in providing services prohibited, 80-2409

CLAIMS
Assignment of claims against state, 83-901 to 83-904

CLERK OF DISTRICT COURT
Arrest, clerk privileged from arrest, when, 95-616
Authorized actions by clerk, M. R. Civ. P., Rule 77(c)
Fees enumerated, 25-232
naturalization fees paid to county treasurer for credit to general fund of county, 25-210
probate proceedings, 25-233
Membership in clerks' association, payment from county funds, 16-3006
Practice of law by clerk, restrictions on, 93-902

CLERK OF SUPREME COURT
Arrest, clerk privileged from arrest, when, 95-616
Fees chargeable by clerk, 82-503
Practice of law by clerk, restrictions on, 93-902
Salary, 25-501

CLOSE PURSUIT
Power of arrest by officers of another state, 95-619

References are to Title and Section numbers

COAL

License tax for strip coal mines, 84-1302 to 84-1304
  credit for reclamation of strip mining land, 50-1004
Native coal preferred for public buildings, 82-1904.1
  use of other fuels not prohibited, 82-1904.2
Reclamation of lands, 50-1001 to 50-1004—See MINES AND MINING, Strip coal mining

CODES AND LAWS

Criminal Procedure, 95-101 et seq.—See CRIMINAL PROCEDURE
Replacement Volumes 1 and 9 to Revised Codes of Montana, 1947
  adoption, 12-337
  omissions or inaccuracies, effect, 12-338
Replacement Volumes 3 and 4 to Revised Codes of Montana, 1947
  adoption, 12-339
  omissions or inaccuracies, effect, 12-340
Replacement Volume 5 to Revised Codes of Montana, 1947
  adoption, 12-343
  omissions or inaccuracies, effect, 12-344
Replacement Volumes 6 and 7 to Revised Codes of Montana, 1947
  adoption, 12-341
  omissions or inaccuracies, effect, 12-342
Session laws index, assistance in preparation, 44-412
Supplements and replacement volumes, control by supreme court, 12-332.1

COERCION

Uniform Commercial Code supplemented by general principles of law, 87A-1-103

COLLEGES AND UNIVERSITIES

Children's center residents, university aid to, 80-2107
Community colleges
  accreditation by state board of education, 75-4414
  annexation of school districts to college district, election on, 75-4430
  boundaries of district to coincide with school district boundaries, 75-4415
  budgeting laws applicable, 75-4425
  buildings, construction, repair and acquisition authorized, 75-4426
  contracts for building, maintenance and supplies, when advertising and bids required, 75-4422
  corporate powers of district, 75-4413
  courses of instruction, determination, 75-4423
  donations, acceptance authorized, 75-4427
    federal and state aid, 75-4426
  election on organization of district, 75-4416
    conduct of election, 75-4418
    notice of election, publication, 75-4418
    trustees elected at same time, 75-4417
  employment of teachers and personnel, 75-4424
  equalization aid, participation in, 75-4425
  federal and state aid, acceptance authorized, 75-4426
  foundation program, participation in, 75-4425
  junior college district, conversion to community college district, 75-4429
  name of district, 75-4413
  officers of district, selection, 75-4419
  petition for organization of district, filing, 75-4416
  population required for formation of district, 75-4413
  property valuation required for formation of district, 75-4413
  retirement system for teachers and trustees, 75-4424
  school district law not applicable, 75-4413
  state aid, 75-4425
  state board of education to supervise districts, 75-4414
  studies and surveys by state board of education, 75-4414
  surplus property of school districts, use by college district, 75-4428
  tax levy authorized, 75-4425, 75-4426

COLLEGES AND UNIVERSITIES (Continued)
Community colleges (Continued)
trustees of district, districts represented and terms of office, 75-4417
election of trustees, 75-4420
first trustees, election, 75-4416
interest in contracts prohibited to trustees, 75-4422
meetings of board, 75-4421
mileage allowance for trustees, 75-4421
oath of office of trustees, 75-4419
organization and officers of board, 75-4419
quorum for transaction of business, 75-4419
seal of board, 75-4419
vacancies on board, filling, 75-4419
tuition charges, determination and approval, 75-4423
Control and supervision vested in state board of education, 75-107, 75-301
community colleges, 75-4414
Entomologist, appointment and qualifications, 82-804.1
Executive boards of institutions, composition and duties, 75-302
officers of boards, 75-303
Executive secretary of university of Montana, 75-107
Expenditures of institution, control by state board, 75-310
Experimental station at Bozeman, federal funds and income received by, 75-706
Experimental station at Corvallis
authority to accept donations of land, 75-710.3
change of name, 75-710.1
donations of money, implements, livestock, authority to receive, 75-710.4
function, 75-710.2
Faculty and president of state institutions, employment by state board of education, 75-107
Grain inspection laboratory
expenditures of laboratory, report, 75-811
fees charged for testing, 75-807
disposition of fees, 75-811
Institutional programs, use of university facilities and personnel in, 80-1405
Junior colleges subject to supervision by state board, 75-4414, 75-4429
conversion to community college district, 75-4429
Juvenile facilities of department of institutions, university aid to, 80-2213
Law enforcement academy
advisory board
composition, 75-5205
duties and powers, 75-5206
term of members, 75-5205
establishment, 75-5203
expenditure of funds for attendance of officers, lawful, 75-5208
officers in attendance at academy not to suffer loss of salary, vacation, seniority or other rights, 75-5207
persons eligible for admission, 75-5204
purpose of establishing, 75-5202
short title, 75-5201
Montana university system, units constituting, 75-401
building construction, authority of regents and governor, 82-3316
construction to be supervised by controller, 82-3317
names of units, 75-402
retired teachers, employment, 75-2707
Research and development programs, university system participation, 75-313
powers of educational units in conducting programs, 75-314
Residence of students, determination for tuition and fee purposes
appeal from adverse decision on residency, 75-506.7
armed forces, requirements for acquisition of domicile, 75-506.4
definition of terms, 75-506.3
income tax payment as evidence of intent to change domicile, 75-506.5
intent of act, 75-506.2
intent required to change domicile, 75-506.5

References are to Title and Section numbers

COLLEGES AND UNIVERSITIES (Continued)
Residence of students, determination for tuition and fee purposes (Continued)
married woman's domicile, 75-506.4
minor's domicile follows that of parents, 75-506.4
change of domicile by parents required for change by minor, 75-506.6
period of residence required to establish change in classification, 75-506.6
written evidence of intent filed with university, 75-506.5
Revenue-producing facilities at university of Montana
borrowing powers of regents, 75-218
state not to be charged with obligations, 75-219
construction to be supervised by controller, 82-3317
powers of regents in general, 75-216
previous contracts unimpaired, 75-222, 75-223
previously authorized bonds unaffected by repeal, 75-223
state funds not to be obligated or used, 75-221
title to real estate and improvements, 75-217
units of university as units for financing, 75-220
University of Montana redesignated as university system, 75-401—See Montana university system, above
Vocational-technical school, university system unit designated as, 75-4301
Wool laboratory, moneys received by, 75-723

COLUMBIA INTERSTATE COMPACT
Commissioners representing Montana, appointment and terms, 89-3202
compensation and reimbursement of commissioners, 89-3204
Cooperation by state officers, 89-3205
Information furnished by state officers, 89-3205
Liberal construction of compact, 89-3206
Notice to president and other governors of ratification, 89-3207
Powers granted to commission, 89-3203
Ratification, 89-3201
Supplemental nature of powers, 89-3206
Text of compact, 89-3201

COMMERCIAL PAPER
Acceleration of performance, good faith required in exercising option, 87A-1-208
Acceptance of instrument
banks' power to accept, 5-1001
certification of check as acceptance, 87A-3-411
date of acceptance of sight draft, 87A-3-410
definition, 87A-3-410
drawee's liability dependent on acceptance, 87A-3-409
engagements of acceptor with respect to payment of instrument, 87A-3-413
finality of acceptance, 87A-3-418
form of acceptance, 87A-3-410
time allowed for acceptance following presentment, 87A-3-506
variation of draft in acceptance, rights of holder, 87A-3-412
Accommodation party, rights and liabilities, 87A-3-415
Accrual of causes of action on commercial paper, 87A-3-122
Agent, effect of instrument payable to, 87A-3-117
Alteration of instrument
discharge of parties by alteration, 87A-3-407
material alteration defined, 87A-3-407
negligence contributing to alteration, unavailability of defense, 87A-3-406
unauthorized completion treated as material alteration, 87A-3-115
Alternative payees, effect of instruments, 87A-3-116
Ambiguous terms in instrument, construction, 87A-3-118
Assignment of funds not made by check or draft, 87A-3-409
Bank collections and deposits, extent to which subject to chapter, 87A-4-102
Bank, effect of instrument payable at, 87A-3-121
Bank, effect of instrument payable through, 87A-3-120
Banks' power to accept drafts, 5-1001
Bearer instruments defined, 87A-3-111

COMMERCIAL PAPER (Continued)
Burden of proof as to signature, defenses and due course, 87A-3-307
Certification of check, effect, 87A-3-411
Citation of Uniform Commercial Code chapter, 87A-3-101
Consideration, want or failure as defense, 87A-3-408
Conversion of instrument by refusal to pay, accept or return, 87A-3-419
Course of dealing between parties, application, 87A-1-205
Dates on instrument presumed correct, 87A-3-114
Definition of terms, 87A-3-102
"bill of exchange," 87A-3-104
"certificate of deposit," 87A-3-104
"check," 87A-3-104
"draft," 87A-3-104
general definitions in Uniform Commercial Code, 87A-1-201
index of definitions, 87A-3-102
negotiable instrument, 87A-3-104
"note," 87A-3-104
Demand instruments, instruments included, 87A-3-108
Description of payee in instrument, effect, 87A-3-117
Destroyed instrument, action on, 87A-3-804
Discharge of instrument
holder's right to discharge, 87A-3-301
sets of drafts, discharge by payment of any part, 87A-3-801
Discharge of parties, 87A-3-601
acceptance varying terms of draft, discharge by holder assenting to, 87A-3-412
agreement with another party effecting discharge, 87A-3-601
alteration of instrument discharging parties, 87A-3-407
cancellation of endorsement as discharge, 87A-3-605
delay in presentment, notice of dishonor or protest discharging parties, 87A-3-502
impairment of collateral effecting discharge, 87A-3-606
impairment of recourse effecting discharge, 87A-3-606
mutilation of signature effecting discharge, 87A-3-605
notice of discharge required against holder in due course, 87A-3-602
payment to holder effecting discharge, 87A-3-603
reacquisition by prior party discharging, 87A-3-601
readiness to pay as tender effecting discharge, 87A-3-604
release of party as discharge of intervening party, 87A-3-606
renunciation of rights by holder effecting discharge, 87A-3-605
satisfaction to holder effecting discharge, 87A-3-603
surrender of instrument effecting discharge, 87A-3-605
suspension of enforcement rights effecting discharge, 87A-3-606
tender of payment, extent of discharge by, 87A-3-604
underlying obligation discharged by discharge of instrument, 87A-3-802
Dishonor of instrument
action permitted on instrument or underlying obligation, 87A-3-802
acts constituting dishonor, 87A-3-507
bank making presentment by notice, dishonor following, 87A-4-210
evidence of dishonor, 87A-3-510
notice of dishonor required to charge parties on instrument, 87A-3-501
delay in notice, effect on liabilities of parties, 87A-3-502
evidence of notice, 87A-3-510
excuses for delay or failure to give notice, 87A-3-511
manner of giving notice, 87A-3-508
parties benefiting from notice, 87A-3-508
persons to whom notice given, 87A-3-508
time allowed for notice, 87A-3-508
waiver of notice, 87A-3-511
protest of dishonor
contents of protest, 87A-3-509
delay in protest, effect on liabilities of parties, 87A-3-502
excuses for delay or failure to make protest, 87A-3-511
notice of protest, construction, 93-401-22
permitted on dishonor of any instrument, 87A-3-501
required to charge parties on certain instruments, 87A-3-501

References are to Title and Section numbers

COMMERCIAL PAPER (Continued)
Dishonor of instrument (Continued)
protest of dishonor (Continued)
time allowed for protest, 87A-3-509
waiver of protest, 87A-3-511
rights of holder on dishonor, 87A-3-507
wrongful dishonor, bank liable for damages to customer, 87A-4-402
Drawer's engagements with respect to payment of instrument, 87A-3-413
Endorsement of instrument
ambiguous signature construed as endorsement, 87A-3-402
blank endorsement, effect, 87A-3-204
cancellation of endorsement by prior party reacquiring instrument, 87A-3-208
depositary bank supplying endorsement on behalf of customer, 87A-4-205
engagements of endorser enumerated, 87A-3-414
forged signature, when effective, 87A-3-405
name of payee misspelled or wrong, form of endorsement required, 87A-3-203
negotiation, endorsement required for, 87A-3-202
order of liability of endorsers, 87A-3-414
paper on which endorsement written, 87A-3-202
partial assignment, endorsement operating as, 87A-3-202
"pay any bank" endorsement, effect, 87A-4-201
restrictive endorsement
effect of restrictions, 87A-3-206
intermediary bank not bound by restrictions, 87A-4-205
payor bank not bound by restrictions, 87A-4-205
terms creating restriction, 87A-3-205
special endorsement, effect, 87A-3-204
transferee's right to require endorsement, 87A-3-201
Exemptions from execution, waiver in unsecured note not enforceable, 93-5813.1
Extension terms in instrument, construction, 87A-3-118
Fiduciary, effect of instrument payable to, 87A-3-117
Foreign currency as medium of payment, 87A-3-107
Good faith required, 87A-1-203
Guarantor of payment, rights and liabilities, 87A-3-416
Holder of instrument
bulk transaction preventing holding in due course, 87A-3-302
burden of proof as to holding in due course, 87A-3-307
claims available against holder, 87A-3-305
consideration, want or failure as defense against holder, 87A-3-408
defenses available against holder in due course, 87A-3-305
defenses available against holder not in due course, 87A-3-306
discharge ineffective without notice against holder in due course, 87A-3-602
discharge of instrument, holder's right, 87A-3-301
due course holder, requirements, 87A-3-302
enforcement of payment, holder's right, 87A-3-301
judicial sale preventing holding in due course, 87A-3-302
knowledge preventing holding in due course, 87A-3-304
legal process to obtain instrument preventing holding in due course, 87A-3-302
negotiation of instrument, holder's right, 87A-3-301
nonnegotiable instrument not subject to holding in due course, 87A-3-805
notice preventing holding in due course, 87A-3-304
sets of drafts, taker of any part as holder in due course, 87A-3-801
transfer, holder's power to, 87A-3-301
value given by holder to support holding in due course, 87A-3-303
bank with security interest as holder in due course, 87A-4-209
Incomplete instrument unenforceable, 87A-3-115
Interest on obligation
rate payable in absence of specific rate, 87A-3-118
time of commencement of interest in absence of provision, 87A-3-122
International sight draft, action permitted drawee bank, 87A-3-701
Investment Securities chapter governing where applicable, 87A-8-102
Joint liability of parties on ambiguous terms in instrument, 87A-3-118
Joint payees, effect of instrument, 87A-3-116
Knowledge of purchaser preventing holding in due course, 87A-3-304
Letter of advice of international sight draft, actions permitted drawee bank, 87A-3-701

COMMERCIAL PAPER (Continued)
Limitation of actions, time of accrual of action, 87A-3-122
Litigation on instrument, notice to third party liable, 87A-3-803
Lost instrument, action on, 87A-3-804
Maker's engagements with respect to payment of instrument, 87A-3-413
Negligence contributing to alteration or unauthorized signature, unavailability of defense, 87A-3-406
Negotiability, requirements for, 87A-3-104
bearer instruments, 87A-3-111
collateral statements not affecting negotiability, 87A-3-112
date on instrument, effect on negotiability, 87A-3-114
definite time of payment, terms consistent with, 87A-3-109
money as medium of payment, 87A-3-107
mortgage securing note, effect on negotiability, 93-6010
order of designated person, instruments payable to, 87A-3-110
seal not affecting negotiability, 87A-3-113
separate agreement, effect on negotiability, 87A-3-119
sum certain, terms consistent with, 87A-3-106
unconditional promise or order, permissible terms, 87A-3-105
Negotiation of instrument
bearer instrument negotiated by delivery, 87A-3-202
breach of duty in negotiation, effect, 87A-3-207
corporation exceeding powers, effect of negotiation by, 87A-3-207
duress, effect of negotiation obtained by, 87A-3-207
endorsement, when required for negotiation, 87A-3-202
fraud, effect of negotiation obtained by, 87A-3-207
holder's right to negotiate, 87A-3-301
illegal transaction, effect of negotiation in, 87A-3-207
infant, effect of negotiation by, 87A-3-207
mistake, effect of negotiation obtained by, 87A-3-207
reacquisition by prior party, right to cancel intervening endorsements, 87A-3-208
rescindable negotiation, effect, 87A-3-207
warranties of negotiator, 87A-3-417
bank, items negotiated through, 87A-4-207
Nonnegotiable instruments, application of chapter to, 87A-3-104, 87A-3-805
Notice to purchaser preventing holding in due course, 87A-3-304
Payment of instrument
finality of payment, 87A-3-418
holder's right to enforce payment, 87A-3-301
readiness to pay as tender of payment, 87A-3-604
tender of payment, discharge effected by, 87A-3-604
time allowed for payment following presentment, 87A-3-506
Presentment for payment or acceptance required to charge parties to instrument, 87A-3-501
bank, instrument accepted or payable at, 87A-3-504
bank making presentment by notice to party to accept or pay, 87A-4-210
conversion by refusal to pay, accept or return instrument, 87A-3-419
delay in presentment, effect on liabilities of parties, 87A-3-502
excuses for delay for failure to make presentment, 87A-3-511
exhibition of instrument required, 87A-3-505
identification and evidence of authority of person making presentment required, 87A-3-505
manner of making presentment, 87A-3-504
person to whom presentment made, 87A-3-504
place of making presentment, 87A-3-504, 87A-3-505
receipt for payment required, 87A-3-505
re-presentment after dishonor, terms permitting, 87A-3-507
surrender required on full payment, 87A-3-505
time allowed for presentment, 87A-3-503
waiver of presentment, 87A-3-511
warranties of person presenting, 87A-3-417
bank, items presented through, 87A-4-207
Protest of dishonor—See Dishonor of instrument, above
Reservation of rights by party while performing or accepting performance, 87A-1-207
Sale of goods, payment by check as conditional payment, 87A-2-511

References are to Title and Section numbers

COMMERCIAL PAPER (Continued)
Scope of Uniform Commercial Code chapter, 87A-3-103
Security interest in instrument, means of perfection, 87A-9-304
possession taken by secured party, 87A-9-305
transfer of security interest, rights vested, 87A-3-201
Separate agreements affecting terms of instrument, 87A-3-119
Sets of drafts, rights and liabilities of parties on, 87A-3-801
Several liability of parties on ambiguous terms in instrument, 87A-3-118
Short title of Uniform Commercial Code chapter, 87A-3-101
Signature of instrument
agent's signature, 87A-3-403
ambiguous signature, endorsement presumed, 87A-3-402
assumed name as signature, 87A-3-401
burden of proof as to signature, 87A-3-307
forged signature, when effective, 87A-3-405
fraudulently procured issuance of instrument, signature to, 87A-3-405
mark in lieu of written signature, 87A-3-401
negligence contributing to unauthorized signature, unavailability of defense, 87A-3-406
pleadings as to signatures, 87A-3-307
representative's signature, 87A-3-403
required for liability on instrument, 87A-3-401
trade name as signature, 87A-3-401
unauthorized signature, effect, 87A-3-404
Statute of frauds applicable to sale of personal property other than goods and securities, 87A-1-206
Stolen instrument, action on, 87A-3-804
Subordination of chapter to other chapters of Uniform Commercial Code, 87A-3-103
Third party liable on instrument, notice of litigation, 87A-3-803
Time allowed for required actions, 87A-1-204
Transfer of instrument
endorsement, transferee's right to enforce, 87A-3-201
holder's right to transfer, 87A-3-301
nonnegotiable instrument, application of chapter to, 87A-3-805
reacquisition by prior party, right to cancel intervening endorsements, 87A-3-208
rights vested by transfer, 87A-3-201
security interest transferred, rights vested in transferee, 87A-3-201
warranties of transferor, 87A-3-417
bank, items transferred through, 87A-4-207
Underlying obligation, discharge or suspension by taking of instrument in payment, 87A-3-802
Usage of trade, application, 87A-1-205
Waiver of statutory exemption in unsecured note not enforceable, 93-5813.1

COMMISSION ON PROBLEMS OF AGING
Appointive members, qualifications, appointment and terms, 82-3502
Creation of commission, 82-3501
Functions of commission, 82-3504
Gifts and grants, acceptance and use, 82-3505
Meetings of commission, quorum, 82-3503
Members of commission, 82-3502
Officers of commission, 82-3503
Report to governor and legislative assembly, 82-3506

COMMUNICABLE DISEASES
Definition, 69-4102
Emergency action by executive officer of state department, 69-4113
Food service establishments, diseased person may not work in or handle food, 27-619
Jail prisoners, removal to hospital, 69-4516
Quarantine by state department, penalty for violation, 69-4112
local regulation, violation, 69-4517
Reports by physicians of cases treated, 69-4514
Smallpox vaccination required for school attendance, 69-4515
Tuberculosis control, 69-4301 to 69-4317—See TUBERCULOSIS
Venereal disease, 69-4601 to 69-4617—See VENEREAL DISEASE

References are to Title and Section numbers

COMMUNICATIONS SYSTEM FOR LAW ENFORCEMENT
See LAW ENFORCEMENT TELETYPEWRITER COMMUNICATIONS, 82-3901 to 82-3906

COMPLAINT
Commencement of action by filing of complaint, M. R. Civ. P., Rule 3
Criminal cases, charging offense, 95-1501 to 95-1506—See CRIMINAL PROCEDURE, Complaint
Forms suggested by rules, M. R. Civ. P., Appendix of Forms, Forms 2 to 14
Joinder of claims and remedies, M. R. Civ. P., Rule 18
Justices' courts, permissible pleadings, 93-6802.1
Service with summons, M. R. Civ. P., Rule 4D(2)

CONDITIONAL SALES
See SECURED TRANSACTIONS, 87A-9-101 to 87A-9-507
Definition of term, 19-103

CONFESSIONS
Criminal cases, motions to produce or suppress confession or admission, 95-1804, 95-1805

CONGRESS
Residence required for election or appointment to Congress, 23-2206

CONSIDERATION
Failure as affirmative defense, M. R. Civ. P., Rule 8(c)

CONSTABLES
Fees enumerated, 25-309
Fish and game laws, enforcement by constables, 26-114

CONSTITUTIONAL AMENDMENTS
Apportionment of legislative assembly, VI, 2 and 3
Attorney general's summary of proposed amendments for placement on ballot, 37-104.1
County attorney, extension of term of office, VIII, 19
Limitation on indebtedness of city, town, township, school district or high school district, XIII, 6
War emergency, continuity of state and local governments, powers of legislature, V, 46

CONSUMER LOAN ACT
Advertising, limitations on, 47-219
Annual examination of licensee, 47-216
Annual report
  contents, 47-218
  date required, 47-218
Appeals from order of commissioner, 47-225
Change of place of business, 47-206
"Commissioner" defined, 47-202
Confessions of judgment prohibited, 47-213
Consumer loan commissioner
  access to records, power, 47-226
  annual examination of licensee, 47-216
  appeals from, 47-225
  bank examiner designated, 47-203
  cease and desist orders, 47-227
  investigative powers, 47-215
  office created, 47-203
  powers and duties vested in, 47-203
"Consumer type loan business" defined, 47-202
Contents of annual report required of licensee, 47-218
Contract or statement of contents
  copy to be furnished borrower, 47-212
  required contents, 47-212

References are to Title and Section numbers

CONSUMER LOAN ACT (Continued)
Contracts of loan violating act, effect, 47-204
Definitions, 47-202
Exemptions from act, 47-204
Fee for annual examination of licensee, 47-216
First installment payment, date for, 47-211
Injunctions, power, 47-227
Installment payments, time period for, 47-211
Instruments containing blanks prohibited, exception, 47-213
Insurance required of borrower, restrictions and limitations on, 47-214
Interest charged, maximum, 47-204
Investigations, 47-215
License
  definition, 47-202
  denial, 47-207
  fee, 47-206
  fee for annual examination of licensee, 47-216
  fee for renewal, 47-209
  issuance, 47-207
  liability of licensee not affected by surrender of license, 47-221
  license year, 47-206
  notifying applicant of denial of license, 47-207
  operating without, penalty, 47-228
  pre-existing lawful contracts not affected by surrender, revocation or expiration of license, 47-222
  reinstatement, 47-224
  renewal, 47-209
  required, 47-206
  surrender of license by licensee, 47-221
  suspension or revocation
    hearing, 47-223
    notice, 47-223
    reinstatement, when, 47-224
"Licensee" defined, 47-202
Loans in excess of $1,000 by licensee prohibited, 47-205
Penalties for violations of act, 47-228
Period of time licensee required to preserve records, 47-217
"Person" defined, 47-202
Place of business
  change, effect on license, 47-206
  conduct of other business in same office, 47-208
  license required for, 47-206
Rates and charges
  additional charge, default or extension agreement, 47-210
  excess charges, effect, 47-210
  maximum rate of charge, 47-210
  penalty for violation, 47-228
  permissible rates, 47-210
  recording fees, 47-210
  refunds, 47-210
Receipt, licensee required to give, 47-212
Receivers, appointment for licensees, 47-227
Records, access of commissioner to, 47-226
Records required of licensee, 47-217
Repayment of loan in full, duty of licensee upon, 47-212.
Rules and regulations, 47-203
Scope of act, 47-204
Secured transactions, application of chapter to, 87A-9-203
Short title, 47-201
Time period for repayment, limitations on, 47-211
Wage assignments, 47-220

CONTAGIOUS DISEASES
  See COMMUNICABLE DISEASES

References are to Title and Section numbers

CONTEMPT OF COURT

Habeas corpus, refusal to obey writ, 95-2706
Judgment or order, disobedience, M. R. Civ. P., Rule 70
Subpoena, failure to obey, M. R. Civ. P., Rule 45(f)

CONTINUITY OF GOVERNMENT

Post-attack resource management, 77-1501 to 77-1508—See WAR, Resource management
Post-enemy-attack continuity in government, V, 46; 82-3801 to 82-3809—See WAR, Continuity in government

CONTRACTS

Actions against state, law not modified by Uniform Commercial Code, 87A-10-103
Assignment of contract rights, 87A-9-101 to 87A-9-507—See SECURED TRANSACTIONS
Capacity to contract
  education, minors' capacity to borrow for, 64-106.1
  Uniform Commercial Code supplemented by general principles, 87A-1-103
Statute of frauds, 13-606—See STATUTE OF FRAUDS

CONTRIBUTORY NEGLIGENCE

Affirmative defense, M. R. Civ. P., Rule 8(c)

COOPERATIVE ASSOCIATIONS

Amendment of articles, 14-204
Articles of incorporation, filing, 14-201
Certificate of incorporation, issuance, 14-204
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
Unclaimed distributions, when presumed abandoned, 67-2205—See also PROPERTY, Unclaimed property

COOPERATIVE MARKETING ASSOCIATIONS

Fees for filing of articles and issuance of certificate, 14-422

CO-ORDINATE SYSTEM

Adoption of Coast and Geodetic Survey system, 67-2011
Documents, maps and reports, use of co-ordinates in, 67-2017
Interzonal tracts, description, 67-2014
Proximity to triangulation or traverse station required for recording of description, 67-2016
Public land surveys prevail over co-ordinate system, 67-2018
Purchasers and mortgagees not required to rely on co-ordinate system, 67-2019
Technical description of system and zones, 67-2015
Triangulation and traverse stations, incorporation into system, 67-2015
X- and y-co-ordinates, description and use, 67-2013
Zones, division of state into, 67-2011
  designation of zonal systems, 67-2012
  technical description of zones, 67-2015

CORAM NOBIS

Post-conviction hearing, 95-2601 to 95-2608—See CRIMINAL PROCEDURE, Post-conviction hearing

CORONER

See COUNTY CORONER, 95-801 to 95-814

CORPORATIONS

Business Corporation Act, 15-2201 to 15-22-140—See BUSINESS CORPORATION ACT
Criminal procedure, offenses committed by corporations, issuance of summons, 95-615
Fees payable to secretary of state for filing and issuance of papers, 25-102

References are to Title and Section numbers

CORPORATIONS (Continued)
Insurance holding companies act, 40-5501 to 40-5508—See INSURANCE, Holding companies act
License tax—See TAXATION, Corporation license tax
Nonprofit corporations, 15-2301 to 15-2397—See NONPROFIT CORPORATION ACT
Professional corporations, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Religious Corporation Sole Act, 15-2401 to 15-2402—See RELIGIOUS CORPORATION SOLE ACT
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
Securities registration, 15-2001 to 15-2025—See SECURITIES REGISTRATION
Service of process on corporation, M. R. Civ. P., Rule 4D(2)
Shareholders' derivative actions, allegations required, M. R. Civ. P., Rule 23(b)
Stock, issuance, transfer, and registration, 87A-8-101 to 87A-8-406—See INVESTMENT SECURITIES
  fiduciary transfers, 15-652 to 15-662—See INVESTMENT SECURITIES, Fiduciary transfers
Unclaimed stock or distributions, when presumed abandoned, 67-2205—See also PROPERTY, Unclaimed property

COSMETICS
See FOOD AND DRUGS, Food, drug and cosmetic act, 27-701 to 27-725

COSMETOLOGY
Compensation of examining board members, 66-809
Fees payable by licensees and applicants, 66-815
Injunctions, 66-817
Licenses to teach, renewal requirements, 66-816
Moneys received by examining board, deposit and use, 66-809

COSTS
Judgment to provide for costs, M. R. Civ. P., Rule 54(d)
Offer of judgment before trial, effect on costs, M. R. Civ. P., Rule 68
Recommencement of previously dismissed action, M. R. Civ. P., Rule 41(d)

COUNTERCLAIM
Addition of parties, M. R. Civ. P., Rule 13(h)
Assignee bringing action, claims available against, 93-3403
Compulsory counterclaim, M. R. Civ. P., Rule 13(a)
Dismissal of counterclaim, M. R. Civ. P., Rule 41(c)
Exceeding opposing claim permitted, M. R. Civ. P., Rule 13(c)
Joinder of claims and remedies, M. R. Civ. P., Rule 18
Justices' courts, permissible pleadings, 93-6802.1
Omitted counterclaim, pleading by amendment, M. R. Civ. P., Rule 13(f)
Permissive counterclaims, M. R. Civ. P., Rule 13(b)
Separate trial and judgment permitted, M. R. Civ. P., Rule 13(i)
State and public agencies, right to counterclaim against not enlarged, M. R. Civ. P., Rule 13(d)
Supplemental pleading of claim arising or acquired after original pleading, M. R. Civ. P., Rule 13(e)
Third party brought in by plaintiff, M. R. Civ. P., Rule 14(b)
Trustee bringing action, claims available against, 93-3403

COUNTIES
Airports, establishment, 1-801 to 1-803—See AERONAUTICS, City and county establishment of airports
Ambulance service
  establishment authorized, 69-3601
  joint service authorized, 69-3601
  methods of operation, 69-3602
  previously existing service unaffected, 69-3603

COUNTIES (Continued)
Boarding homes for aged persons
lease of county property for home, 16-1036
operation of home by county, 16-1037
services provided at county-operated home, 16-1038
Bond issues
earnings of sinking funds investments, disposition, 16-2001
elections on issuance, 16-2026, 16-2028
flood control costs, bonds issued to pay, 89-3312
investment of sinking funds, 16-2001, 16-2044
limitation on amount of bond issues, 16-2010
purposes for which issues authorized, 16-2008
repurchase of bonds from sinking fund moneys, 16-2044
rescission of authority for issue, 16-2028
resolution for issuance, 16-2028
road and bridge bonds, 32-3801 to 32-3806—See HIGHWAYS, BRIDGES AND FERRIES, County bonds
types of bonds permitted, 16-2012
Bonds of officers, 6-203 to 6-209—See BONDS AND UNDERTAKINGS
Budgets
adoption of budget, 16-1904
emergency expenditures, provision for, 16-1907
tax levy, fixing, 16-1904
Buildings constructed to accommodate handicapped persons, 69-3701 to 69-3719—See PUBLIC BUILDINGS, Handicapped persons, construction of buildings to accommodate
City and county consolidation—See CITY AND COUNTY CONSOLIDATION
City-county building, acquisition or construction authorized, 11-4201
bonding authority undiminished, 11-4203
contracts between city and county, 11-4202
Commission for management of civic centers, youth centers, museums, parks, hospitals, etc., 16-1008A
County buildings and improvements, erection and management, 16-1008A
County hospital, 16-1008A
joint hospitals authorized, 16-1040
definition of terms, 16-1039
terms of agreement, 16-1041
County water districts
collection of water tax, 16-4528
corporation voting at election, 16-4508
laws governing elections, 16-4508
levy of water tax, 16-4528
notice of tax assessment, 16-4527
persons owning real property within district but residing outside, authority for voting, 16-4508
protest against tax assessment, 16-4527
publication of notice of election, 16-4520
qualified electors, 16-4520
revenues as inadequate to pay bonded debt, assessment of taxes, 16-4527
water taxes, 16-4527
Deposit of funds by treasurer, 16-2618
Disaster emergency tax, city-county
board of commissioners meeting, 11-4303
definitions, 11-4301
determination of disaster, resolution of disaster committee, 11-4302
levy of tax to cover expenses, 11-4305
resolutions stating emergency, 11-4304
surplus held in separate fund, 11-4306
Employees, hours of work of salaried personnel, 59-510(2)
Examination by state examiner, fee, 5-904
Federal funds received under flood control act, use, 79-2101, 79-2102
Flood control, 89-3301 to 89-3313—See FLOOD CONTROL AND WATER CONSERVATION
Gasoline tax exemption permits, issuance and use, 84-1802
Group insurance for officers and employees, 11-1024

References are to Title and Section numbers

COUNTIES (Continued)
Health, board of, 69-4501 to 69-4509—See HEALTH, LOCAL BOARDS OF
Hospitals constructed by joint action of two or more counties, 69-5312
Improvement districts for road construction, 32-3101 to 32-3131—See HIGHWAYS, BRIDGES AND FERRIES, Local improvement districts
Indemnity insurance premiums, payment from county funds, 16-1001
Industrial development projects, 11-4101 to 11-4110—See INDUSTRIAL DEVELOPMENT
Interlocal co-operation, 16-4901 to 16-4904—See INTERLOCAL CO-OPERATION
Joint county youth guidance centers, 16-1008B
Leases of county property, 16-1030
License proceeds, disposition, 84-2708
Mineral reservations in conveyance of property, validation, 16-1122.1
Motor vehicle license fund, sources, disposition and use, 53-122
Nursing home for aged persons
  joint institutions authorized, 16-1040
    definition of terms, 16-1039
    terms of contract between counties, 16-1041
  lease of county property for home, 16-1036
  operation of home by county, 16-1037
    services provided at county-operated home, 16-1038
Open meetings of public agencies
  legislative intent, 82-3401
  meetings to be open, exceptions, 82-3402
  minutes to be available for public inspection, 82-3403
Photostatic or mechanical processes for records—See RECORDING
Planning and zoning—See PLANNING AND ZONING
Printing, County Printing Commission Act. 16-1225 to 16-1233
  contract for county printing, duty of county commissioners, 16-1230
    competitive bids may be allowed, 16-1232
    contractor's bond, 16-1231
    letting of contracts at less than maximum prices, 16-1232
    subletting contract, 16-1231
  county fairs and expositions, exemption from act, 16-1233
  county printing commission, establishment of, 16-1227
    annual meeting, 16-1227
    compensation of members, 16-1228
    members appointed by governor, terms of office, 16-1227
    powers and duties of commission, 16-1226, 16-1229
  purpose of act, 16-1226
  rates, power and duty of county printing commission to set maximum prices, 16-1226
  short title, 16-1225
Property, prior dispositions validated, 16-1510, 16-1511
Public camping and recreational park, appropriations for, 62-102
Public defender's office, authority to establish, 95-1006
Purchases and contracts
  advertising for bids, when required, 16-1803
  preference to Montana bidders, 82-1924
    federal aid projects exempt, 82-1926
    provisions in contract for preference to Montana materials and labor, 82-1926
    residence, definition, determination of, 82-1925, 82-1925.1
Records, destruction after period of years, 59-516
Road fund, allotment from state land equalization payments, 81-1120
Road fund, use for flood control projects, 89-3308
Royalty reservations in conveyance of property, validation, 16-1122.1
Rural improvement districts
  assessment for lighting systems, 16-1629
  cancellation of record of extinguished liability account, 16-1638
  districts including more than one county
    areas includable in district, 16-1605.1
    trustees to administer district
      number of trustees, 16-1605.2
      powers of trustee, 16-1605.4
      terms of office of trustee, 16-1605.3
      vacancies in office, 16-1605.3

COUNTIES (Continued)
Rural improvement districts (Continued)
ditch protection devices, 16-1601(1)
form of warrants and bonds, 16-1620
"improvements" defined, 16-1626
lighting systems
apportionment of costs, 16-1629
maintenance, 16-1629
purchase contracts entered by county commissioners, 16-1607
purchase of property authorized, 16-1601(2)
sale of bonds and warrants, 16-1620
"work" defined, 16-1626
Salaries of county officers, 25-605
establishment before election, 25-609
Service of process on counties, M. R. Civ. P., Rule 4D(2)
Special examination by state examiner, fee, 5-910
State land equalization payments, 81-1115 to 81-1121—See STATE LANDS, Equalization payments to counties
Surplus funds of county or school district, investment, 16-2050
Tax levy for county purposes, 16-1015
flood control indebtedness, levy to pay, 89-3312
Water conservation, 89-3301 to 89-3313—See FLOOD CONTROL AND WATER CONSERVATION
Weed control embargo, proclamation by governor, 16-1708
fines and inspection fees, disposition, 16-1708.3
rules and regulations for enforcement prescribed by commissioner, 16-1708.1
violations of embargo, penalty, 16-1708.2
Zoning districts, 16-4701 to 16-4710—See PLANNING AND ZONING, County zoning districts

COUNTY ASSESSOR
Salary, establishment before election, 25-609
Schools and meetings of county assessors and appraisers conducted by state board, 84-708
State land equalization payments to counties, duties, 81-1115 to 81-1121

COUNTY ATTORNEY
Coroner's inquest, duties, 95-803
Election, qualifications, term of office, and salary, VIII, 19
Fire districts, representation, 16-3101
Health laws, enforcement by attorney, 69-4111
Labeling of paint and paint products, violations, duties, 3-1515
Salary, establishment before election, 25-609
Securities act, enforcement duties, 15-2021

COUNTY AUDITOR
Counties in which office exists, 16-3201
Oath of office, 16-3204

COUNTY CLERKS
Associations and organizations of clerks
memberships, payment for, 16-2926
travel expense to attend meetings, 25-508
Fees, enumeration, 25-231
Indexes to be maintained by clerks, 16-2905
New-voter list furnished to political parties by clerk, 23-501.1
Practice of law by clerk, restrictions on, 93-902
Salaries, establishment before election, 25-609
Seed lien records, filing and retention, 16-2922
destruction of records, when allowed, 16-2923
Threshers' lien records, filing and retention, 16-2922
destruction of records, when allowed, 16-2923

References are to Title and Section numbers

COUNTY COMMISSIONERS

Cancellation of record of extinguished liability accounts, 16-1638
Dog licensing, 16-4601 to 16-4615—See DOGS
Erection and management of county buildings, 16-1008A
Extra sessions, 16-910
Fire protection in unincorporated areas
  fire districts
    annexation, 11-2008
    contracts with cities, towns and private companies for service, 11-2008
    creation, 11-2008
    dissolution, 11-2008
    division, 11-2008
    tax levy for, 11-2008
    trustees, 11-2010
  fire insurance premium tax deposited into volunteer fireman's compensation fund, amount, 11-2030
Garbage and ash collection
  contractors rendering service, approval of rates by commissioners, 16-1031
  districts, establishment by commissioners, 16-1031
Indemnity insurance premiums, payment from county funds, 16-1001
Leases of county property, 16-1030
Meetings, 16-910
Parks, donation of land to state, municipality or federal government for park, 16-1131
Post-enemy-attack, continuity in government, V, 46; 82-3801 to 82-3809—See WAR, Continuity in government
Right of way areas, reseeding when natural sod is disturbed, 16-1004.1
Salaries of county officials, establishment before election, 25-609
Tax levy for construction, maintenance and repair of public ferries, 32-1518
Tax levy for county purposes, 16-1015

COUNTY CORONER

Autopsies, when authorized, 95-802
  liability of mortuary or physician limited, 95-813
Death or stillbirth by other than natural causes, duty to make investigation, 95-801
Deputy coroners, appointment authorized, 95-814
Inquests
  county attorney to request and give aid and assistance, 95-803
  definition, 95-803
  jurors, number summoned, jurors to be sworn, 95-803, 95-804
  public proceedings required, 95-809
  recording and transcribing proceedings, payment of expenses, 95-808
  testimony of witnesses, writing required, filing, 95-508
  verdict of jury, writing required, contents, 95-807
  when coroner to hold inquest, 95-803
  witnesses, subpoena of, examination, 95-805
    compelling attendance of witness, 95-806
    writing and filing of testimony, 95-808
Jurisdiction of coroner, 95-812
Laboratory facilities, provision and payment for, 95-814
Notice to law enforcement agencies by coroner, when required, 95-801
Property found on body, disposition of, 95-810
Register required, contents, 95-811
Reports to coroner, when required, 95-801
Technical and clerical assistance, provision and payment for, 95-814

COUNTY SURVEYOR

Plat books showing roads to be prepared by surveyor, 32-2803

COUNTY TREASURER

Deposits of public funds, 16-2618
Investment of public funds in government securities, 16-2618
Salary, establishment before election, 25-609

COUNTY WATER AND SEWER DISTRICTS

Consolidation of districts, petition and procedure, 16-4531
Sewer service charges, payment of operating expenses, 16-4526
Water and sewer rates, 16-4525

COURTS
Arrest, officers privileged from arrest, 95-616
Criminal procedure, definition, 95-205
Judges' retirement system, 93-1107 to 93-1132—See JUDGES, Retirement system
Jurisdiction of persons, M. R. Civ. P., Rules 4A, 4B

CREDIT CARDS
Violations involving credit cards, 94-1823 to 94-1830—See CRIMINAL OFFENSES, Credit device violations

CREDIT UNIONS
Accounts excluded from chapter on secured transactions, 87A-9-104
Articles of incorporation
  approval by supervisor of credit unions required, 14-133
  certified copy as prima facie evidence of facts stated, 14-134
  contents of articles, 14-133
  fees for filing and recording, 14-155
  filing with secretary of state, 14-133
  form prepared by supervisor of credit unions, 14-136
Banks exempt from provisions of chapter, 14-157
Board of directors
  compensation of directors prohibited, 14-141
  composition of board, 14-141
  election and terms of directors, 14-141
  powers and duties, 14-143
Bonds required of officers, 14-152
Borrowing power, 14-147
Building and loan associations exempt from provisions of act, 14-157
Bylaws, form, approval, and amendment, 14-136
Certificate of incorporation, issuance, 14-133
  evidence of corporate character and capacity, 14-135
  fees for issuance, 14-155
Change in place of business, 14-154
Citation of act, 14-130
Conversion to or from federal credit union, 14-156
Credit committee
  compensation of members prohibited, 14-141
  composition of committee, 14-141
  election and terms of members, 14-141
  powers and duties, 14-144
Definition of terms, 14-131
Destruction of records of liquidated credit union, 14-152
Dissolution of credit unions, 14-152
  fee for filing certificate, 14-155
Dividends on earnings, 14-150
Evidence of corporate character and capacity, 14-135
Examination of books
  state examiner's examination, fee, 5-910
  supervisor of credit unions, examination by, 14-132
  supervisory committee examination, 14-145
Expulsion of member, procedure, 14-151
Federal credit union, conversion to or from, 14-156
Fees assessed for examinations, 14-132
  disposition of fees, 14-155
  state examiner's fee, 5-910
Fiscal year, 14-140
Incorporation of credit union, procedure, 14-133
Interest chargeable on loans, 14-146
Joint tenancy in shares, 14-139
Legislative power to amend or appeal reserved, 14-153
Liquidation by state supervisor, 14-152
Loans to members
  application for loan, form, 14-144
  approval by credit committee required, 14-144

References are to Title and Section numbers

CREDIT UNIONS (Continued)
Loans to members (Continued)
directors and committee members, restrictions on loans to, 14-148
interest rate chargeable, 14-146
purposes for which authorized, 14-148
repayment privileges of borrower, 14-148
security required, 14-144
Meetings of members, 14-140
Membership, qualifications and restrictions, 14-139
approval by board of directors, 14-143
expulsion of member, 14-141
withdrawal of member, 14-141
Merger of credit unions, 14-152
fees for certificate, 14-155
Name of credit union, 14-133
Officers, appointment and duties, 14-142
bond required by state supervisor, 14-152
Perpetual succession during corporate existence, 14-138
Powers of credit union, 14-138
Prior rights and duties unaffected by act, 14-158
Reports to supervisor of credit unions, 14-132
Reserves against losses, maintenance required, 14-149
Rules and regulations prescribed by supervisor, 14-152
Securities exempt from securities act, 15-2013
Separability of provisions of act, 14-153
Short title of act, 14-130
State supervisor's powers, 14-152
Supervisory committee
audit of books, 14-145
compensation of members prohibited, 14-141
composition of committee, 14-141
election and terms of members, 14-141
powers and duties, 14-145
suspension of members of committee, 14-145
Term not to be used by other persons or firms, 14-137
Voting by members, 14-140
Withdrawal of member, procedure, 14-151

CRIMINAL INVESTIGATOR
Appointment and qualifications, 82-414
Creation of position within office of attorney general, 82-414
Definition of "investigator," 82-415
Files of criminal investigator, access to limited, 82-417
Location of office, 82-420
Powers and duties, 82-416
Retirement system, investigator and assisting personnel covered, 82-418
State agencies to co-operate with investigator, 82-419

CRIMINAL LAW STUDY
Application for service on commission, 94-1001-3
Appointment of commission by supreme court, 94-1001-2
Composition of commission, 94-1001-3
Employment of secretary and research services by commission, 94-1001-9
Expenses of commission members, reimbursement, 94-1001-10
Officers of commission, selection, 94-1001-11
Procedural rules, adoption by commission, 94-1001-11
Proposals for changes in law
distribution to bench and bar by commission, 94-1001-4
hearings by supreme court on commission proposals, 94-1001-6
legislative approval required, 94-1001-7
submission to supreme court for approval, 94-1001-5
supreme court, suggestions by, 94-1001-8
Purpose of act, 94-1001-1
Records of commission proceedings, 94-1001-11

CRIMINAL LAW STUDY (Continued)
Removal of members from commission, 94-1001-3
Research agencies, employment by commission, 94-1001-9
Scope of study by commission, 94-1001-2
Terms of office of commission members, 94-1001-3
Vacancies on commission, filling, 94-1001-3

CRIMINAL OFFENSES
Alcoholic beverage bottle clubs, 4-172, 4-173
Alienation of affections, bringing or threatening litigation, 17-1206
Bids for contracts, unlawful agreements for refunds or returns, penalty, 94-1104
Bigamy, venue of prosecution, 95-410
Big-game hunting violation as misdemeanor, 26-303.4
Bounty law, fraudulent claims under, 46-1915
Breach of promise, bringing or threatening litigation, 17-1206
Children, offenses involving
  abandonment or nonsupport, 94-304
  firearms, permitting use, 94-3579
  lewd and lascivious acts against children, 94-4106
  violations by children, causing, permitting, or contributing to, 10-617
Coloration of wheat, oats, rye or barley
  required when products treated with injurious or toxic substances, 94-35-271.1
  sale or offering for sale in violation of act, 94-35-271.2
  violation of act requiring coloration, misdemeanor, 94-35-271.3
Commercial tow cars improperly equipped, 32-21-161, 32-21-162
Consumer loan act, violations, 27-228
Corporations
  annual report, failure to file, 15-22-125
  signing of false documents by corporate officers or directors, 15-22-126
County zoning regulations, violation, 16-4707
Credit device violations
  felony, violations deemed, 94-1829
  knowledge of falsity or revocation implied from presentation or use, 94-1828
  misdemeanor, violations deemed, 94-1829
  notice of revocation of device, manner in which given, 94-1827
  possession of false or stolen device unlawful, 94-1826
  retention of device without authority unlawful, 94-1825
  telephone or telegraph communications originating or terminating in state, application to, 94-1830
  theft of credit device unlawful, 94-1825
  unauthorized use of credit device unlawful, 94-1823
  use of false, expired or revoked credit device unlawful, 94-1823
Credit union, misuse of name, 14-137
Dentistry, practice without certificate, 66-919
Discrimination because of race, creed, color or national origin, 64-303
Dog licensing act violations, misdemeanor, 16-4613
Driving while license suspended or revoked, 31-155
Electric lines, tampering with or tapping, 94-3203
Escape from custody on interstate detainer, 94-1101-4
False personation to register at election, 23-503
Firearms, permitting use by minors, 94-3579
Fireworks regulatory act, penalty for violation, 69-2706
Fish illegally taken, possession or removal from state, 26-701
Fishing violations under reciprocal privileges, 26-228
Food, Drug and Cosmetic Act, violations of, 27-705
Food service establishments, offenses relating to, 27-625
  obtaining food with intent to defraud, penalty, evidence of intent, 94-1831
Funeral directors and insurers, prohibited relations, 40-3521
Game animals, contests based on size, 26-811
Game illegally taken, possession or removal from state, 26-701
Game wardens' retirement system, false claims under, 68-1423
Grain warehousemen
  operation without license, 3-228
  reports, falsification or failure to file, 3-227
  weighing device, use unauthorized, 3-202

References are to Title and Section numbers

CRIMINAL OFFENSES (Continued)
Homicide, state criminal jurisdiction, 95-304
death and cause of death in different counties, venue, 95-406
Horse racing violations, 62-508
Hotels, obtaining accommodations with intent to defraud, penalty, evidence of intent, 94-1831
Identification cards, false procurement, penalty, 94-2014
Inducing engagement as advertising agency for sale of real property by misrepresentation of services, penalty, 94-1822
Industrial insurance account in agency fund, conversion of profits from, 92-1123
Industrial school resident, aiding in leaving school, 80-2212
Insurance agent, misappropriation of funds by as larceny, 40-3324
Insurance code violations, 40-2617
false representation in applications and claims, 40-3522
Kidnaping, venue of prosecution, 95-411
Labeling requirements on paint and paint products, penalty for violation, 3-1511
Larceny, robbery, false pretenses or embezzlement, venue of offenses, 95-408
Livestock running at large in road construction area, 32-321
Lobbyist licensing and regulatory act, violations, 43-808
Marriage, declaration of marriage without solemnization, violation of act concerning, 48-130.2
Mortician's and funeral director's act, violation, 66-2717
Motels, obtaining accommodations with intent to defraud, penalty, evidence of intent, 94-1831
Motorboat and vessel regulatory act, penalty for violations, 69-3518
Narcotic drug act violations, penalties, 54-125
Obscene conduct, harassment by telephone, penalty, 94-35-221.5, 94-35-221.6
Obtaining money for property or services by false pretenses, penalty, 94-1805
Occupational disease act, violation, penalty, 92-1340
Optometry, practice without license, 66-1314
Petroleum products, violations with respect to, 60-233
Political contributions by insurers, 40-3518
Post-attack resource management, violation of rules and regulations, 77-1508
Poultry improvement law, violation, 3-2212
Printing for state, obtaining from noncomplying contractor, 82-1138
Private conversation, recording without knowledge of parties as misdemeanor, 94-35-274
exemptions from general prohibition, 94-35-275
Real estate license act violations, 66-1940
Recording of conversation without knowledge of parties as misdemeanor, 94-35-274
exemptions from general prohibition, 94-35-275
Refuse disposal areas, violations with respect to, 69-4009
Retail installment sales act, penalty for violation, 74-611
Roadblocks established by peace officers, failure to stop, penalty, 95-618
Schools, failure of parent, guardian or person having custody to require children to attend, penalty, 75-2901
Seal on gasoline pumps and petroleum measuring devices, etc., removing or breaking, penalty, 90-129
Seed law violations, 3-819
Sheep, removal from county without permit, 46-810
Subdivided lands, improper sale or leasing outside state, 67-2116
Telephone and telegraph facilities, offenses involving
abuse, harassment or extortion by telephone, 94-35-221.5, 94-35-221.6
false or unauthorized use of credit card or telephone number, 94-1823
felony, credit device violations deemed, 94-1829
fraudulent device to obtain service without intention to pay, 94-1824
injury to or removal of coin box or wires, 94-3211
interstate communication, application of credit act to, 94-1830
knowledge presumed from unauthorized use of credit card or telephone number, 94-1828
misdemeanor, credit device violations deemed, 94-1829
notice of revocation of credit card, manner of giving, 94-1827
tampering with or tapping lines, 94-3203

CRIMINAL OFFENSES (Continued)
Television, operation of VHF booster or VHF translator system, penalty for violations of act, 70-407
Tourist camps, obtaining accommodations at without intention to pay, 94-3550
Trucks, failure to display owner's name on, 53-803
Unauthorized insurer, representing or aiding, 40-3401
Unclaimed property, failure to report or pay over to state treasurer, 67-2225
Uniform facsimile signatures of public officials act, violation with intent to defraud, felony, 59-1304
Union interference with operation of sole proprietor or two man partnership retail or amusement establishment, 41-1805
Vocational school for girls resident, aiding in leaving school, 80-2212
Warehouse receipts, crimes involving
delivery of goods without obtaining possession of receipt, 88-154
duplicate negotiable receipt, issuance, 88-152
Wife, abandonment or nonsupport, 94-301
Wild turkey, taking in violation of act, misdemeanor, 26-512

CRIMINAL PROCEDURE
Admission, motion to produce or suppress, 95-1804, 95-1805
Appeals
amicus curiae, brief of, 95-2417
application of chapter, 95-2401
authority of court, determination of appeal, 95-2426
briefs
amicus curiae, brief of, 95-2417
appellant's brief, contents and arrangement, 95-2416
appendix, 95-2418
filing and service of, 95-2419
form, printing and binding, 95-2420
submission of case on briefs, court may direct argument, 95-2421
calendar, placing causes upon calendar, setting for argument, 95-2424
death sentence, stay of execution, 95-2406
defendant, appeal from conviction and certain orders after judgment, scope of review, 95-2404
determination on appeal, authority of reviewing court, 95-2426
dismissal for failure to cause timely transmission or to docket appeal, 95-2410
dismissal of appeal, effect of, 95-2411
docket
docketing appeal, 95-2410
entry and notice of orders and judgments, 95-2422
errors on appeal
jurisdictional or constitutional rights noticed, 95-2425
matters not affecting substantial rights disregarded, 95-2425
reversal for error by trial court against appellant, error must be prejudicial, 95-2412
filing of papers, 95-2413
briefs, time for filing, number of copies, consequences of failure to file, 95-2419
petitions for rehearing, 95-2423
time, computation and extension of, 95-2414
fine, stay of execution, 95-2406
form of briefs, motions, and other papers, 95-2420
habeas corpus, appeal from order discharging petitioner, 95-2714
hearings, oral arguments, requirements, 95-2421
petition for rehearing, 95-2423
imprisonment, defendant admitted to bail, stay of execution, 95-2406
indigent appeals, procedure, 95-2428
justices' courts, procedure for trial in district court, 95-2009
mailing of copy of judgment or order and mailing of notice of date of entry, duties of clerk, 95-2422
motions, writing required, contents, time for answer, 95-2415
filing with judge, 95-2413
form, printing and binding, 95-2420

CRIMINAL PROCEDURE (Continued)
Appeals (Continued)
notice of appeal
contents, service, 95-2405
exclusive method of review, 95-2401
opinion of court, issuance of mandate, return of record and termination of jurisdiction, 95-2427
oral argument, requirements, 95-2421
calendar, withdrawal of records, 95-2424
petitions for rehearing, 95-2423
orders, rulings, or proceedings of trial court against respondent, review on appeal, 95-2412
parties, appellant and respondent, 95-2405
police courts, procedure for trial in district courts, 95-2009
fines for city ordinance violations, disposition of, 95-2008.1
post-conviction hearing, 95-2601 to 95-2608—See Post-conviction hearing, below
appeal from order, 95-2608
probation, effect of appeal, 95-2406
record on appeal
agreed statement as record, 95-2408
composition of record, 95-2408
correction or modification of record, 95-2408
filing of record, 95-2410
indigent appeals, procedure, 95-2428
permission to take from clerk's office, 95-2424
statement of evidence or proceedings, 95-2408
transcript of proceedings, duties of parties, costs, 95-2408
transmission of record, time for, duty of appellant, duty of clerk, extension of time, 95-2409
relief pending appeal, 95-2406
remand of cause to trial court, return of record and termination of jurisdiction, 95-2427
reversal of judgment, defendant discharged, 95-2430
scope of appeal
defendant, appeal from conviction and certain orders after judgment, scope of review, 95-2404
state, appeals from certain court orders or judgments, 95-2403
sentence, review of sentence, 95-2211, 95-2501 to 95-2504—See Sentence and judgment, review of sentence, below
service of papers, 95-2413
briefs, time for, number of copies, 95-2419
time, computation and extension of, 95-2414
several defendants, appeal by one authorized, 95-2429
state, appeals from certain orders or judgments authorized, 95-2403
effect of appeal by state, 95-2407
stay of execution, 95-2406
substantive rights of parties, consideration on appeal, 95-2412
suspension of statutory requirements authorized, 95-2402
time, computation and extension of, 95-2414
time for appeal, 60 days after rendition of judgment, 95-2405
title of case not changed, 95-2405
Appearance of arrested person, duties of person who made arrest and of court, 95-901, 95-902
Arraignment
answer, time allowed, 95-1607
definition, 95-1601
irregularity of arraignment, effect, 95-1608
joint defendants, 95-1605
place of arraignment, 95-1602
presence of defendant, 95-1603, 95-1604
procedure on arraignment, 95-1606
Arrest, 95-601 to 95-619—See ARRESTS
Bail, 95-1101 to 95-1123—See BAIL

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)
Change of judge, 95-1709
Change of venue, 95-401, 95-1710
justices' and police courts, 95-2003
Charging offense, methods of prosecution, 95-1501, 95-1502
"charge" defined, 95-203
justice and police courts, 95-2001
Close Pursuit Act, 95-619
Competency of accused
death sentence, determination of mental fitness, 95-2304, 95-2305
defense of mental disease or defect excluding responsibility
affirmative defense, notice, form of verdict and judgment on finding of irresponsibility, 95-503
determination of irresponsibility on basis of psychiatrist's report, judgment, 95-507
legal effect of acquittal, commitment of defendant, release or discharge, 95-508
requirements, 95-501
definition of "mental disease or defect," 95-501
evidence of mental disease or defect, when admissible, 95-502
evidence, statements for purposes of examination or treatment inadmissible except on issue of mental condition, 95-509
examination of defendant, rights of defendant or state, form of expert testimony, 95-505, 95-507
fitness to proceed, mental disease or defect excluding
effect of finding of unfitness, proceedings if fitness regained, 95-506
requirements, 95-504
privilege, statements for purposes of examination or treatment inadmissible except on issue of mental condition, 95-509
psychiatric examination of defendant, rights of defendant or state, form of expert testimony, 95-505, 95-507
test for mental disease or defect excluding responsibility, 95-501
Complaint
amending charge, 95-1505
appearance of person arrested without warrant, filing complaint, 95-901
form of charge, 95-1503
joinder of offenses and of defendants, 95-1504
prior conviction, charge of, notice and procedure, 95-1506
prosecution of offense by complaint, 95-1501, 95-1502
justice and police courts, 95-2001
Confession, motion to produce or suppress, 95-1804, 95-1805
Construction of Code of Criminal Procedure, 95-102
Continuance, pretrial motion, requirements, 95-1708
Conviction—See Sentence and judgment, below
definition, 95-204
Coroner's office, 95-801 to 95-814—See COUNTY CORONER
Counsel, right to
appearance of arrested person, duty of court to inform defendant of rights, 95-902
duration of appointment of counsel, 95-1003
duty of court to inform defendant, 95-902, 95-1001
felony charge, furnishing counsel required, when, 95-1001
misdemeanor charge, furnishing counsel, when, 95-1001
payment of appointed counsel, 95-1005
post-conviction criminal action or proceeding, appointment of counsel authorized, 95-1004
public defender's office, authority of counties to establish, 95-1006
waiver of counsel, 95-1002
Courts, definition, 95-205
Death sentence
appeals, stay of execution, 95-2406
execution of sentence, procedure, 95-2303
mental fitness of defendant, determination of, proceedings, 95-2304, 95-2305
pregnant female, proceedings, 95-2306, 95-2307
Defenses and objections raised before trial, 95-1701, 95-1702
Definitions
arraignment, 95-1601

CRIMINAL PROCEDURE (Continued)
Definitions (Continued)
arrest, 95-601
charge, 95-203
conviction, 95-204
coroner's inquest, 95-803
court, 95-205
gender, masculine gender includes feminine, 95-202
guaranteed arrest bond certificate, 95-1121
judge, 95-206
judgment, 95-207
magistrate, 95-208
meanings of words and phrases, 95-201
mental disease or defect, 95-501
new trial, 95-2101
notice to appear, 95-601
offense, 95-209
peace officer, 95-210
search warrant, 95-703
sentence, 95-211
singular term includes plural, 95-202
summons, 95-601
warrant of arrest, 95-601
Depositions, 95-1802
Discharge of defendant
granting of motion to dismiss, 95-1706
not guilty judgment, 95-2202
reversal of judgment on appeal, 95-2430
Discovery, applicable rules, 95-1803
Dismissal of action, complaint, information, or indictment
motion of court or application of attorney prosecuting, 95-1703
pretrial motion, effect of determination, 95-1706
Disqualification of judge, requirements and procedure, 95-1709
Evidence
books, documents and objects, subpoena authorized, inspection or copying by defendant, 95-1801, 95-1803
confession or admission, motion to produce or suppress, 95-1804, 95-1805
depositions, 95-1802
illegally seized evidence, motion to suppress, 95-1806
Examination of defendant, preliminary examination, 95-1201 to 95-1204—See Preliminary examination, below
Examination to determine competency of accused, 95-505, 95-507
Execution of sentence, 95-2301 to 95-2312—See Sentence and judgment, execution of sentence, below
Grand jury, 95-1401 to 95-1410—See GRAND JURY
Guilty plea, conditions for acceptance, withdrawal
district court, 95-1902
justices' and police courts, 95-2004
Habeas corpus, 95-2701 to 95-2716—See HABEAS CORPUS
Indictment, 95-1401 to 95-1410—See GRAND JURY
Information
amending charge, 95-1505
application for leave to file information, requirements, 95-1301
commencement of prosecution by information, 95-1501, 95-1502
district court judge, information against, procedure, 95-1301
failure of county attorney to file, duty of court, 95-1303
form of charge, 95-1503
joinder of offenses and of defendants, 95-1504
prior conviction, charge of, notice and procedure, 95-1506
time for filing by county attorney, effect of failure, 95-1302
Initial appearance of arrested person, duties of person who made arrest and of court, 95-901, 95-902
Insanity, 95-501 to 95-509—See Competency of accused, above
Interstate agreement on detainers, text and enactment, 94-1101-1
cooperation of public agencies in enforcement, 94-1101-3
coordinator of agreement, appointment and duties, 94-1101-6

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)
Interstate agreement on detainers (Continued)
delivery of prisoner by institution on detainer, 94-1101-5
district courts to function under agreement, 94-1101-2
escape from custody on detainer, penalty, 94-1101-4
Joinder of offenses and of defendants in making charge, 95-1504
appeal by one defendant authorized, 95-2429
Judges
definition, 95-206
disqualification, substitution of judge, requirements and procedure, 95-1709
Judgments, 95-2201 to 95-2216—See Sentence and judgment, below
definitions, 95-207, 95-211
Juries and jurors
coroner's inquest, number of jurors, jurors to be sworn, 95-803, 95-804
district court
admonition upon adjournment of court, 95-1913
alternate jurors, 95-1909
challenges, 95-1909
examination of jurors, 95-1909
formation of trial jury, number of drawn, 95-1905
instructions to jury, 95-1910
list of prospective jurors furnished, 95-1909
number of jurors, 95-1901
objection to jury panel, motion to discharge, 95-1908
qualifications and exemptions, 95-1909
retirement of jury, 95-1913
right to jury trial, 95-1901
separation during trial, 95-1913
verdicts—See Verdicts, below
view of place of offense or property, 95-1912
grand jury, 95-1401 to 95-1410—See GRAND JURY
justices' courts, 95-2004 to 95-2006—See Justices' courts, below
police courts, 95-2004 to 95-2006—See Police courts, below
Jurisdiction
appeals, remand of cause and termination of jurisdiction, 95-2427
coroner, jurisdiction of, 95-812
district courts, 95-301
justice of the peace courts, 95-302
municipal courts, 95-303
police courts, 95-303
state criminal jurisdiction, 95-304
Justices' courts
change of place of trial, 95-2003
disqualification of judge, 95-1709
docket required, contents, 95-2002
guilty plea, conditions for acceptance, 95-2004
juries and jurors
discharge of jury, 95-2006
examination of jurors, challenges, 95-2005
formation of trial jury, 95-2005
number of jurors, 95-2005
right to trial by jury, waiver, 95-2004
verdict, 95-2006
jurisdiction of criminal cases, 95-302
preliminary examination, 95-1201 to 95-1204
prosecutions commenced by complaint, 95-2001
sentence and judgment, execution of judgment, 95-2007, 95-2008
trials
guilty plea, conditions for acceptance, 95-2004
issue, designation for trial, 95-2004
preparation for trial, time for, 95-2004
presence of defendant, requirements, 95-2004
right to jury trial, waiver, 95-2004
verdicts
number of jurors required to concur, 95-2006

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)
Justices' courts (Continued)
verdicts (Continued)
poll of jury, 95-2006
return, requirements, 95-2006
several defendants, requirements, 95-2006
Magistrate, definition of, 95-208
Mental disease or defect of accused, 95-501 to 95-509—See Competency of accused, above
Motions
appeals, requirements, 95-2415
filing with judge, 95-2413
new trial, 95-2101
post-conviction hearing, time for motion, 95-2604
pretrial motions, 95-1701 to 95-1710—See Pretrial motions, below
New trial, definition and effect, motion for, 95-2101
appeal, authority to order new trial, 95-2426
bail, provisions for, 95-1119
Notice to appear, issuance, form, failure to appear, 95-614
Peace officers
arrests, 95-608—See ARRESTS, Peace officer
bail, acceptance, procedure, 95-1103, 95-1104
definition, 95-2010
Police courts
appeals, procedure for trial in district court, 95-2009
fines for city ordinance violations, disposition of, 95-2008.1
change of place of trial, 95-2003
docket required, contents, 95-2002
juries and jurors
discharge of jury, 95-2006
examination of jurors, challenges, 95-2005
formation of trial jury, 95-2005
number of jurors, 95-2005
right to trial by jury, waiver, 95-2004
verdict, 95-2006
jurisdiction of criminal cases, 95-303
prosecutions commenced by complaint, 95-2001
sentence and judgment, execution of judgment, 95-2007, 95-2008
fines for city ordinance violations tried on appeal, disposition of, 95-2008.1
trials
guilty plea, conditions for acceptance, 95-2004
issue, designation for trial, 95-2004
preparation for trial, time for, 95-2004
presence of defendant, requirements, 95-2004
right to jury trial, waiver, 95-2004
verdicts
number of jurors required to concur, 95-2006
poll of jury, 95-2006
return, requirements, 95-2006
several defendants, requirements, 95-2006
Post-conviction hearing
appeal from order entered on motion, 95-2608
commencement of proceedings by petition, 95-2602
contents of petition, 95-2603
grounds for petition, 95-2601
proceedings on petition, notice, proof, order, 95-2605
record required, 95-2606
successive petitions prohibited, 95-2607
time for motion, any time after conviction, 95-2604
Prejudice
change of place of trial, requirements and procedure, 95-1710
justice and police courts, 95-2003
substitution of judge, requirements and procedure, 95-1709
Preliminary examination
definition, 95-1201

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)
Preliminary examination (Continued)
deposition of witness after examination, requirements, 95-1204
exclusion and separation of witnesses, 95-1203
proceedings at examination, 95-1202
recognizance by witness after examination, requirements, 95-1204
waiver of preliminary examination, defendant held to answer, 95-1202
Presentence investigations, contents, availability of report, 95-2203 to 95-2205
Pretrial motions
arraignment, motions allowed in answer, 95-1607
books, documents and objects, subpoena authorized, inspection or copying by defendant, 95-1801, 95-1803
confession or admission, motions to produce or suppress, 95-1804, 95-1805
continuance, requirements for motion, 95-1708
defenses and objections raised before trial, 95-1701, 95-1702
denial of motion, procedure, 95-1706
depositions, 95-1802
discovery, applicable rules, 95-1803
dismissal of action on motion of court or application of attorney prosecuting, 95-1703
disqualification of judge, requirements and procedure, 95-1709
evidence illegally seized, motion to suppress, 95-1806
granting of motion to dismiss, procedure, 95-1706
hearing on motion, 95-1705
jury panel, objection to, motion to discharge, 95-1908
substitution of judge, requirements and procedure, 95-1709
time of making motion, 95-1704
transfer of trial, motion based on lack of jurisdiction or improper place, 95-1707
Prior conviction, charge of, notice and procedure, 95-1506
Prosecution, methods of charging offense, 95-1501, 95-1502
justice and police courts, 95-2001
Public defender's office, 95-1006
Purpose of Code of Criminal Procedure, 95-102
Recognizance
preliminary examination of criminal defendant, recognizance by witness after examination, 95-1204
release authorized, duties of court, 95-1106
Review division of supreme court
appointment of district court judges, 95-2501
decisions, procedure and disposition of, 95-2503
meetings, where held, 95-2501
number of judges, number required for decision, 95-2501
procedure for review, 95-2502
scope of act, 95-2504
Rights of defendant
change of place of trial, 95-1710, 95-2003
counsel, right to, 95-1001 to 95-1006
initial appearance of arrested person, duties of person who made arrest and of court, 95-901, 95-902
jury trial, 95-1901, 95-2004
substitution of judge, 95-1709
Roadblocks, arrests at, 95-618
Rules of supreme court, 95-2801 to 95-2806—See Supreme court rules, below
Scope of Code of Criminal Procedure, 95-101
Search and seizure, 95-701 to 95-708—See SEARCH AND SEIZURE
Second offense, charge of prior conviction, notice and procedure, 95-1506
Sentence and judgment
board of pardons, statistical data transmitted to, 95-2210
combination of sentences authorized, 95-2206
commutation of prison sentence to commitment to juvenile facilities, 80-2210
construction of chapter, liberal construction, 95-2201
credit for incarceration prior to conviction, 95-2215
credit for time served, 95-2214
death sentence, execution of, 95-2303—See Death sentence, above

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)
Sentence and judgment (Continued)
deferment of imposition of sentence, 95-2206
withdrawal of plea allowed, effect, 95-2207
definitions, 95-207, 95-211
entry of judgment and judgment roll, 95-2209
execution of sentence
commitment of defendant, 95-2206, 95-2301
death sentence, 95-2303—See Death sentence, above
fine, execution of, 95-2302
justices' courts, 95-2008
police courts, 95-2008
sheriff, commitment of defendant to custody of, 95-2301
fines for offense, imposition of, 95-2206
appeal, stay of execution, 95-2406
execution of, 95-2302
lien of judgment to pay fine, 95-2208
guilty verdict, sentence and judgment within reasonable time, 95-2202
imposition of sentence, exclusive duty of judge, 95-2212
investigations, contents of presentence investigation, availability of report, 95-2203 to 95-2205
justices' courts, 95-2007, 95-2008
mental disease or defect excluding responsibility, form of verdict and judgment on finding of irresponsibility, 95-503
merger of sentences, 95-2213
not guilty judgment, discharge of defendant, 95-2202
open court, judgment rendered in, 95-2202
police courts, 95-2007, 95-2008
post-conviction hearing, 95-2601 to 95-2608—See Post-conviction hearing, above
presentence investigations, contents, availability of report, 95-2203 to 95-2205
probation authorized, 95-2206
review division of supreme court, 95-2501 to 95-2504—See Review division of supreme court, above
review of sentence, 95-2211
sentences enumerated, 95-2206
separate sentences, merger of sentences, 95-2213
stay of execution of sentence authorized, 95-2206
Western Interstate Corrections Compact, 95-2308 to 95-2312
work release program for prisoners, 95-2216
Subpoenas
coroner's inquest, subpoena of witnesses, compelling attendance, 95-805, 95-806
discovery, subpoena as discovery device, 95-1803
issuance, requirements and form, 95-1801
Substitution of judge, requirements and procedure, 95-1709
Summons, definition, issuance, form and service, failure to appear, 95-601, 95-612, 95-613
Supreme court rules
adoption of rules of pleading, practice and procedure, authority of court, 95-2801
advisory committee, appointment, members, duties, 95-2801
effective date of rules, 95-2805
expiration date of rule-making power, 95-2805
legislature's right to adopt rules not abridged, 95-2806
present laws and rules, in force until modified or superseded, 95-2804
promulgation of rules of pleading, practice and procedure, authority of court, 95-2801
proposed rules, distribution of and hearings before adoption, 95-2803
rights of state or a defendant, not abridged, enlarged or modified, 95-2801
Transfer of trial
justice and police courts, 95-2003
lack of jurisdiction or proper venue, 95-1707
prejudice existing in county, 95-1710
Trials
district court
adjournment of court, 95-1914
admonition to jury, 95-1913

CRIMINAL PROCEDURE (Continued)
Trials (Continued)
district court (Continued)
county attorney, failure to attend, appointment of substitute, 95-1903
discharge of defendant, when, 95-1916
guilty plea, conditions for acceptance, withdrawal, 95-1902
instructions to jury, 95-1910
issues, designation for jury trial, 95-1901
jury panel, objection, motion to discharge, 95-1908
jury trial, 95-1901—See Juries and jurors, district court, above
lesser offense, conviction of authorized, 95-1915
not guilty plea, issues, 95-1901
order of prosecutions, 95-1906
order of trial, 95-1910
departure from, authority for, 95-1911
preparation for trial, reasonable time allowed, 95-1907
presence of defendant, mistrial for absence, 95-1904
retirement of jury, 95-1913
right to jury trial, number of jurors, 95-1901
separation of jurors during trial, 95-1913
several defendants, verdicts, 95-1915
view of place of offense or property, 95-1912
justices' courts, method of trial, 95-2004—See Justices' courts, above
mental disease or defect excluding fitness to proceed
requirements, procedure, 95-504 to 95-506
new trial, definition and effect, motion for, 95-2101
appeal, authority to order new trial, 95-2426
bail, provisions for, 95-1119
police courts, method of trial, 95-2004—See Police courts, above
several defendants, verdicts, 95-1915
appeal by one defendant authorized, 95-2429
verdicts—See Verdicts, below

Venue
aiding, abetting, or procuring commission of offense in another county, 95-404
bigamy, trial where marriage or cohabitation occurred, 95-410
boundary, offense committed on or near, 95-403
change of venue, 95-401, 95-1710
justice and police courts, 95-2003
commencement of offense outside state, trial where offense consummated, 95-407
death and cause of death in different counties, 95-406
escape from prison, trial in any county, 95-409
kidnaping, trial where victim has traveled or been confined, 95-411
objections to place of trial, waiver, hearing, 95-401, 95-1710
justice and police courts, 95-2003
stolen property, trial in county where control exerted, 95-408
telephone misuse, venue of offenses, 94-35-221.5
transit, offenses committed while in, 95-405
treason, trial in any county, 95-412
trial in county where offense committed, 95-401
two or more acts occurring in different counties, 95-402

Verdicts
coroner's inquest, writing required, contents, 95-807
district court
directed verdict, 95-1909
general verdict to each offense, 95-1909
lesser offense, conviction of authorized, 95-1915
number required to concur, 95-1915
poll of jury, 95-1915
return of verdict, form, 95-1915
several defendants, 95-1915
justices' courts, 95-2006
police courts, 95-2006

Warrant for search and seizure, definition, issuance, procedure, 95-703 to 95-711
Warrant of arrest, definition, issuance, procedure, 95-601, 95-603 to 95-605
Western Interstate Corrections Compact, 95-2308 to 95-2312

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)
Witnesses
coroner's inquest, subpoena of witness, compelling attendance, writing and filing of testimony, 95-805, 95-806, 95-808
expenses of witnesses, 95-1801
indigent defendants, procedure for obtaining subpoenas, 95-1801
preliminary examination, exclusion and separation, recognizance by or deposition after examination, 95-1203, 95-1204
subpoena, requirements and form, 95-1801

D

DAIRIES AND DAIRY PRODUCTS
Ice cream, definition and standards, 3-2476
Milk containers, measures for, 90-140
Milk control board
assessment upon producer-distributors and distributors, 27-409
bonds required of distributors, 27-426
declaration of policy regulating milk, 27-401
definitions, 27-403
distributors and producer-distributors, records required to be kept by, 27-416
entry and inspection, powers of, 27-415
fair trade practices, rules and regulations governing, 27-414
fines assessed for violations, deposit and use, 27-417
general powers, 27-405
judicial review of orders, 27-428
licenses
application for, 27-410
issuing, 27-409
persons required to obtain, 27-409
local advisory board, duties, 27-427
meetings, 27-404
members, 27-404
minimum prices
fixing, 27-407
hearing on, 27-407
notice of hearing on, 27-407
order for, 27-407
natural marketing areas, designation, 27-406
organization, 27-404
per diem expenses, 27-404
police powers of state invoked, 27-402
protection and promotion of public welfare, 27-402
service of process upon, 27-429
term of members, 27-404
Samples held for inspection by commissioner or agent, 3-2407

DAMAGES AND RELIEF
Measurement of damages, principles applicable under Uniform Commercial Code, 87A-1-106
Tort actions against state, 83-701 to 83-707—See STATE OF MONTANA, Tort actions against

DAMS AND RESERVOIRS
Fish and game affected, clearance required, 26-1501 to 26-1507—See FISH AND GAME, Construction projects affecting fish and game
Taxability of facilities, 84-206

DAY CARE FACILITIES
Assistance by board in meeting standards, 10-809
Definition of terms, 10-801
Enforcement powers of board of public welfare, 10-811
Exemption of facilities from regulatory act, 10-801

DAY CARE FACILITIES (Continued)
Fire safety standards prescribed by fire marshal, 10-804
waiver of fire marshal approval prohibited, 10-807
Health protection standards prescribed by board of health, 10-805
waiver of board of health approval prohibited, 10-807
Inspection of facilities by board of public welfare, 10-809
License required for operation, 10-802
denial, suspension or revocation of license, grounds, procedure and appeal, 10-810
fire safety compliance required for license, 10-804
health standards compliance required for license, 10-805
investigation of applications for license, 10-806
issuance of licenses, 10-806
provisional license, issuance, 10-807
renewal of license, 10-808
standards for license, 10-806
Records and reports required of facilities, 10-809
Rules and regulations for conduct of facilities, 10-806
School districts for child care institutions, 75-5501 to 75-5508—See SCHOOLS, School districts, child care institution
Standards prescribed by board of public welfare, 10-803
Violations of act, investigation and prosecution, 10-811

DEAD ANIMALS
Unlawful disposition, penalty, 69-4518, 69-4519

DEAD BODIES
Autopsy or dissection, cases in which authorized, 69-5103
mortician authorized to perform acts necessary for burial, 69-5105
penalty for unauthorized autopsy or examination, 69-5106
physician to perform autopsy, 69-5104
report of findings by physician, 69-5104
Burial permit required for disposition or removal, 69-4428
delay in determination of death, issuance of permit pending, 69-4427
importation of body into state, endorsement of permit, 69-4429
Certificate of death, 69-4424 to 69-4428—See VITAL STATISTICS, Death certificate
Coroner, powers and duties, 95-801 to 95-814—See COUNTY CORONER
Disposition of person's own body, power to provide for, 69-2311
exemption from civil liability when relying on written authorization, 69-2314
will or acknowledged instrument required, 69-2312
disposition before probate, 69-2313
Medical use of cadavers authorized, 69-5101
procedure for obtaining cadavers, 69-5102
Occupational Disease Act, autopsies under, 92-1318

DEATH SENTENCE
Appeal, stay of execution, 95-2406
Execution of sentence, procedure, 95-2303
Mental fitness of defendant, determination of, proceedings, 95-2304, 95-2305
Pregnant female, proceedings, 95-2306, 95-2307

DECLARATORY JUDGMENT
Action for declaratory judgment, M. R. Civ. P., Rule 57

DEEDS AND CONVEYANCES
Joint tenancy in real property created by direct conveyance, 67-1602.1
Recording as notice as to property acquired after conveyance, 73-201
Unit ownership property, contents of deed, 67-2322
Validation of defectively executed instruments, 73-207 to 73-210
Validation of fiduciary sales, 91-4324, 91-4325
Validation of unacknowledged instruments, 39-135, 39-136

DEFAULT JUDGMENT
See JUDGMENTS, Default judgment, M. R. Civ. P., Rule 55

References are to Title and Section numbers

DEMURRER
Abolition in civil cases, M. R. Civ. P., Rule 7(c)
Abolition in justices' courts, 93-6802.2

DENTISTRY
Alcoholic beverage, administration by dentist, 4-137
Annual renewal of license, fee, 66-906
Board of examiners
compensation of members, 66-909
meetings of board, 66-904
moneys received by board, deposit and use, 66-904
secretary-treasurer of board, duties and accounts, 66-904
Certificate to practice, filing with county recorder, 66-906
Citation of regulatory act, 66-925
Corporations for practice of dentistry, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Injunction to prevent unauthorized practice, 66-911
Laboratories and technicians
advertising to general public prohibited, 66-910
work authorization to be given by dentist, 66-910
National board of examiners certificate, recognition, 66-905
Penalties for practice without certificate, 66-919
Prosecution of violations, employment of special counsel for, 66-909

DEPARTMENT OF ADMINISTRATION
Abolition of previous agencies, 82-3322
Allocation of controller's duties among divisions, 82-3304
Building programs
architects and consulting engineers, appointment, 82-3319
restrictions on architectural work by state, 82-3320
buildings subject to control, 82-3314
definition of terms, 82-3314
emergency repairs and operations authorized by governor, 82-3316
legislative consent, when required for construction, 82-3316
pecuniary interest prohibited to public officers and employees, 82-3321
powers of controller in supervision of construction, 82-3318
submission of programs to controller, governor and legislative assembly, 82-3315
supervision of construction by department, 82-3317
university buildings, authority of regents and governor, 82-3316
Capitol buildings and grounds, oversight and supervision by controller, 82-3309, 82-3310
Citation of act, 82-3301
Controller as chief executive officer, 82-3302
Creation of department, 82-3302
Data processing, computer, duplicating, copying, and automatic typing facilities, maintenance for state agencies, 82-3306
Divisions within departments, enumeration and appointment of division heads, 82-3303
allocation of duties among division, 82-3304
Mailing facilities, maintenance for state agencies, 82-3306
Office space, assignment to state agencies, 82-3308
Purpose of act, 82-3301
Records management program, 82-3311
definition of "records," 82-3312
destruction of records, procedure for authorization, 82-3313
library and museum material excluded from program, 82-3312
Regulations for administration of department, 82-3305
Reports of controller, 82-3305
Short title of act, 82-3301
Telephone switchboard, maintenance for state agencies, 82-3307

DEPARTMENT OF HEALTH
Board of health, composition and appointment of members, 69-4103
chairman of board, 69-4104
compensation of members, 69-4104
duties of board, 69-4106

DEPARTMENT OF HEALTH (Continued)
Board of health (Continued)
legal adviser to board, 69-4111
meetings of board, 69-4104
powers of board, 69-4106
secretary of board, 69-4104
Clean Air Act, administration, 69-3904 to 69-3923—See AIR POLLUTION CONTROL
Consultants, employment by executive officer, 69-4109
Definition of terms, 69-4102
Duties of department, 69-4110
Establishment of department, 69-4101
Executive officer of department, qualifications, appointment and salary, 69-4107
powers and duties, 69-4109
removal from office, procedure, 69-4108
Food, Drug and Cosmetic Act, enforcement, 27-701 to 27-725—See FOOD AND DRUGS, Food, Drug and Cosmetic Act
Food service establishments, licensing and regulation, 27-611 to 27-625—See FOOD AND DRUGS, Food service establishments
Hospital survey and construction, department as principal agency, 69-5302
powers and duties of department, 69-5303
Industrial hygiene and occupational disease, investigations and reports by department, 69-4203
Information furnished to department on request, 69-4114
Inspection and correction of conditions in public buildings, 69-4118
Laws administered by department, 69-4105
Legal adviser to department, 69-4111
Local boards, general supervision by state board, 69-4502
Mental health regions, establishment by division of mental hygiene, conformity to state plan, 80-2407
Powers of department, 69-4110
Venereal disease, departmental functions with respect to, 69-4602
Vital statistics, departmental functions with respect to, 69-4403
Water supply, protection by state board, 69-4808, 69-4809
domestic water supply, 69-4903

DEPARTMENT OF INSTITUTIONS
See STATE INSTITUTIONS, Department of institutions, 80-1401 to 80-1412

DEPOSIT
Storage deposits, applicability of Uniform Commercial Code to, 20-314

DEPOSITIONS
Criminal procedure, 95-1802
Errors in depositions, effect, M. R. Civ. P., Rule 32
Irregularities in depositions, effect, M. R. Civ. P., Rule 32
Justices' courts, 93-7712
Oral examination, manner of taking deposition, M. R. Civ. P., Rule 30
Pending action, scope and procedure for depositions, M. R. Civ. P., Rule 26
Pending appeal, procedure for perpetuation of testimony, M. R. Civ. P., Rule 27(b)
Perpetuation of testimony before action, M. R. Civ. P., Rule 27(a)
Persons authorized to take depositions, M. R. Civ. P., Rule 28
Stipulations to govern taking of depositions, M. R. Civ. P., Rule 29
Subpoena for taking of depositions, M. R. Civ. P., Rule 45(d)
Written interrogatories, manner of taking depositions, M. R. Civ. P., Rule 31

DEPOSITS IN COURT
Statutes govern deposits, M. R. Civ. P., Rule 67
Unclaimed deposit presumed abandoned, 67-2208—See PROPERTY, Unclaimed property

DISCOVERY
Admission of facts and genuineness of documents, request for, M. R. Civ. P., Rule 36
form suggested by rules, M. R. Civ. P., Appendix of Forms, Form 21

References are to Title and Section numbers

DISCOVERY (Continued)
Criminal procedure, rules for discovery, inspection, and notice, 95-1803
Documents and papers, discovery and production, M. R. Civ. P., Rule 34
Interrogatories to parties, M. R. Civ. P., Rule 33
Physical and mental examination of persons, M. R. Civ. P., Rule 35
Probate proceedings, application of procedures to, M. R. Civ. P., Rule 1
Refusal to make discovery, effect, M. R. Civ. P., Rule 37
Tangible objects, discovery and production, M. R. Civ. P., Rule 34

DISCRIMINATION
See CIVIL RIGHTS

DISEASE
See COMMUNICABLE DISEASES

DISTRICT COURTS
Adjournments, 93-316
Calling of juries for trial of causes, 93-315
Chambers, acts and proceedings done in, M. R. Civ. P., Rule 77(b)
Conciliation court, sitting as, 36-203
powers of conciliation court, 36-205
Criminal jurisdiction, 95-301
Departments, division of district into, 93-321
Disqualification of judge
civil cases, 93-901
criminal cases, 95-1709
District comprised of two or more counties, holding of court continuously and simultaneously in each or any county, power, 93-316
Election of judges
arrangement of names on primary ballot, 23-2005
departments considered separate and independent offices for election purposes, 23-2001
petition for nomination, contents and filing, 23-2003
Fixing of terms where district comprises two or more counties, 93-315
Grand juries, summoning, discretion of district judge, 95-1401
Interstate agreement on detainers, district courts to function under, 94-1101-2
Judges
assignment of judges to departments, 93-321
criminal law study commission, service on, 94-1001-3
expenses outside county of residence, certification and filing, 93-314
expenses outside district, certification and filing, 93-306
indictment against, filing, 95-1410
information against, procedure for permission to file, 95-1301
number, 93-302
practice of law, restrictions on, 93-902
retired judge, call for duty, 93-1130
retirement system, 93-1107 to 93-1132—See JUDGES, Retirement system
salary, 93-303
Jurisdiction
criminal offenses, 95-301
rules of civil procedure do not extend or limit jurisdiction, M. R. Civ. P., Rule 82
tort actions against state, 83-701
Open at all times, M. R. Civ. P., Rule 77(a)
Pre-trial calendar, M. R. Civ. P., Rule 16
Reporters
appointment by judges, 93-1901
attendance to duty in person required, 93-1907
copies of proceedings furnished to parties, fees, 93-1904
fees payable by parties before trial, 93-1905
notes of testimony and proceedings, filing with clerk, 93-1902
oath of office, filing, 93-1901
objections and exceptions, writing out and filing with clerk, 93-1903
prima facie correctness of reports, 93-1908
pro tempore reporter in absence of regular reporter, 93-1907

References are to Title and Section numbers

DISTRICT COURTS (Continued)
Reporters (Continued)
reimbursement of expense outside county of residence, 93-1906
salary of reporter, 93-1906
transcript of evidence, admissibility, M. R. Civ. P., Rule 80
Review division of supreme court for review of criminal sentences, 95-2501 to 95-2504
Rules of practice adopted by district courts, 93-2801-4, M. R. Civ. P., Rule 83
Term of court, 93-315

DITCHES
Municipal regulation of open ditches
declaration of nuisance, 11-4002
investigative powers of governing body, 11-4003
irrigation ditches exempt, 11-4006
notice to close and fill ditch, 11-4004
protective devices provided by owner, 11-4005
purpose of act, 11-4001
Rural improvement districts authorized to build protection devices, 16-1601(1)
Taxability of ditches, 84-206

DIVORCE
Foreign divorce of parties domiciled in state, when not recognized, 21-150
Registrar of vital statistics, report to, 69-4433
judicial information included in report, 69-4434
Stay of proceedings to attempt reconciliation, 21-135.1
conciliation petition filed, 36-204
Waiting period before decree granted, 21-135.1

DOGS
Damages to livestock or poultry, liability of owner of dog, 16-4614
"Kennel" defined, 16-4602
Licenses
application, 16-4602
collar and license tag required, 16-4601
county commissioners may provide for, 16-4602
disposition of fees, 16-4612
fee, 16-4603
kennel license
application, 16-4602
fee, 16-4603
license year, 16-4602
municipal license tag in compliance with act, 16-4604
removal of tag when dog under immediate control of owner, 16-4601
required, 16-4601
"Owner" defined, 16-4615
Public inspection of applications on file, 16-4603
Seizure and impounding
contract with humane societies and other associations, authority for, 16-4607
contract with municipal corporations for use of impounding facilities, authority, 16-4607
county commissioners, duties, 16-4606
county pound master, appointment, 16-4607
disposition of impounded dogs, 16-4608
dogs running at large without tags, 16-4605
dogs suspected of rabies or known to have bitten human or animal, retaining, 16-4608
fee for impoundment and keep, 16-4609
fees and charges as charged against county, 16-4610
fees, payment by owner claiming dog, 16-4610
failure to pay pound fee, abandonment, 16-4611
fines, disposition, 16-4612
Violation of act constitutes misdemeanor, 16-4613

DRAINAGE DISTRICTS
Bonds
resolution for issuance of bonds or notes, 89-2501
signatures on, 89-2501
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A

DRIVER EDUCATION
See SCHOOLS, Driver education program, 75-5301 to 75-5309

DRIVER LICENSE COMPACT
See OPERATORS' AND CHAUFFEURS' LICENSES, Interstate compact, 31-163 to 31-169

DRUGS
See FOOD AND DRUGS, Food, drug and cosmetic act

DURESS
Affirmative defense, M. R. Civ. P., Rule 8(c)
Uniform Commercial Code supplemented by general principles of law, 87A-1-103

E

ECONOMIC OPPORTUNITY
See PUBLIC WELFARE, Economic opportunity and poverty relief, 71-1601 to 71-1604

ELECTIONS
Absentee voting
application for ballot, 23-1302
form, 23-1303
ballots
delivery or mailing to election judges, 23-1309
form of return and affidavit, 23-1306
mailing by absent or physically incapacitated voter to county, city or town clerk, 23-1307
mailing to elector, 23-1306
marking and swearing to by elector, 23-1307
rejected ballots, 23-1311
deposit in box, 23-1313
duties of judges on election day, 23-1313
elections to which applicable, 23-1301
elector present on election day, duty, 23-1320
failure of elector present to go to polls, misdemeanor, 23-1320
federal post card application, 23-1303
form, 23-1403
judges of election, duty concerning on election day, 23-1311
method of marking ballot, 23-1307
notation on poll books, 23-1311
oath for elector in United States service, 23-1404
opening of envelopes containing ballots, 23-1313
persons eligible to vote by absentee ballot, 23-1301
prospective absence or incapacitation, voting before election date, 23-1312
rejection of ballot for late application, 23-1309
school district election forms and regulations, preparation, 23-1303.1
Alcoholic beverages
days retail beer establishments to be closed, 4-303
days retail establishments to be closed, 4-414
Arrest, electors privileged from arrest, 95-616
Ballots
form and contents, 23-1109
placement of offices on ballot, order of, 23-1111

References are to Title and Section numbers

ELECTIONS (Continued)
Bonds, creation or increase in municipal or school indebtedness, qualifications for voting, 84-4711
Canvass of returns, 23-1702
declaration of election of candidate with highest vote, 23-1807
messenger to receive returns from delinquent counties, 23-1815
tie vote after recount, certification to governor, 23-1807
Certificate of election, issuing, 23-1808
Certificate of nomination, where filed, 23-803
Clerks of election
candidates and relatives ineligible to serve, 23-604.1
exceptions, 23-604.2
compensation of clerks, 23-605
Congressional candidates, residence in state required, 23-2206
Constitutional amendments, attorney general's summary placed on ballot, 37-104.1
Constitutional convention, delegates to, nomination, 23-2402, 23-2403
County and city central committeemen, 23-929
County bond issue elections, electors, 16-2026
County clerks
compensation for election duties, 23-519
federal post card applications for absentee registration, duties concerning, 23-1405
preparation of precinct registers, 23-304
Disabled electors, aid by judges or persons designated by elector, 23-1213
Electronic voting systems
abandonment of system, 23-2503
adoption of system authorized, 23-2503
booths to be provided for voters, 23-2504
closing of polls where system used, 23-2505
counting of votes, 23-2505
damaged or defective ballots, disposition, 23-2505
definition of term, 23-2502
experimental use of system, 23-2503
general election laws applicable, 23-2507
order of information on ballot, 23-2504
precinct boundary changes where system used, 23-2503
preparation of devices for election, 23-2504
presidential voting by single punch or mark required, 23-2506
primary elections, use of systems at, 23-2503
purpose of act, 23-2501
return of votes, 23-2505
rules and regulations for administration, 23-2506
sample ballots, cards and labels provided, 23-2504
sealing and delivery of ballots to counting location, 23-2505
secret voting required, 23-2506
specifications for systems, devices and equipment, 23-2503, 23-2506
testing of equipment prior to election, 23-2504
write-in ballots to be provided, 23-2504
Initiative measures, attorney general's summary placed on ballot, 37-104.1
Judges of election
candidates and relatives ineligible to serve, 23-604.1
exceptions, 23-604.2
compensation of judges, 23-605
Justices of supreme court and district courts
arrangement of names on primary ballot, 23-2005
petition for nomination, contents and filing, 23-2003
separate and independent offices for election purposes, 23-2001
tie vote, certification to governor, 23-1904
Legislative assembly members, tie vote, certification to governor, 23-1904
Method of voting, 23-1210
New-voter list furnished to political parties by county clerk, 23-501.1
Nonpartisan judicial ballot, arrangement on voting machine, 23-1608, 23-1608A
Political parties
committeemen, selection and powers, 23-929
county conventions, 23-929

References are to Title and Section numbers

ELECTIONS (Continued)
Political parties (Continued)
expenses of conventions, payment, 23-1008
powers of parties to govern own affairs, 23-1009
state convention delegates, selection, 23-929
Poll book, what constitutes, 23-1219
Precinct register
compensation of county clerks for preparing, 23-519
"election" defined, 23-530
identification of voter whose name appears in copy of register, 23-526
omission of name from, remedy, 23-527
preparation, 23-304, 23-513
when not furnished city or town, 23-515
Primary nominating election
date for holding, 23-902
electronic voting system, use at primary, 23-2503
fee for filing petition, 23-910
officers to be nominated, 23-902
parties to which act applicable, 23-909
petition, time for filing, 23-912
poll books, precinct register and tally sheets, sealing and returning, 23-908
returns, canvass of, 23-921
Recount after close election
abstract of votes, correction after recount, 23-2318
state board, correction by, 23-2319
certificate of election or nomination, issuance when recount changes result, 23-2318
effect of new certificate, 23-2320
state board, issuance by, 23-2319
certification of results of recount, 23-2318
closeness of returns required to furnish ground for recount, 23-2311
county recount board, composition, 23-2314
clerks employed by board, 23-2315
convening of board after notice of petition, 23-2316
elections to which procedure applicable, 23-2310
expenses of recount, 23-2322
filing of petition by candidate, 23-2311
liberal construction of act, 23-2309
margin of vote furnishing ground for recount, 23-2311
multiple offices to be filled, computation of total vote, 23-2313
notice to recount board of filing of petition, 23-2316
procedure for conduct of recount, 23-2317
purpose of act, 23-2309
state board of canvassers, proceedings by, 23-2319
supplemental to other procedures, 23-2323
tie vote after recount, 23-2312, 23-2321
legislative election, certification to governor, 23-1807
tie vote, automatic recount after, 23-2312
witnessing of recount, persons entitled, 23-2317
Referendum measures, attorney general's summary placed on ballot, 37-104.1
Registration
absent electors in United States service
authorized, method, 23-1401
definition, 23-1402
federal post card application
form, 23-1403
use for obtaining ballot, 23-1403
oath for elector, 23-1404
cancellation
failure to vote, cancellation, 23-511
notice to voter of cancellation, 23-511
reregistration, 23-511
electors in United States service, 23-503
federal post card application, classification by county clerk, 23-1405
new-voter list furnished to political parties by county clerk, 23-501.1

References are to Title and Section numbers

ELECTIONS (Continued)
Returns
abstract of election returns, transmitting to secretary of state, 23-1813
ballots and stubs, filing and retention by county clerk, 23-1712
ballots in excess of names on poll books, procedure, 23-1703
electronic voting systems, manner of preparing returns, 23-2505
filing of records, books, etc., after canvass of returns, 23-1715
judges, method of making, 23-1709
mode of canvass, 23-1702
retaining by county clerk until canvass, 23-1714
state returns, how made, 23-1812
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
School bond elections
notice of election, 75-3912
qualifications of voters, 75-3938
registration of electors, 75-3912
School matters, elections on
absentee voting forms and regulations, preparation, 23-1303.1
additional tax levies, elections to authorize, 75-3804
expenses of election, 75-1620
Supplies, county commissioners to furnish, 23-704
Voting
disabled electors, judges may aid, 23-1213
list of voters, 23-1219
Voting machines
arrangement of ballot on machine, 23-1608A
clerk to set up machine for use, 23-1608
exhibition of machine after count determined, 23-1611
irregular ballots, sealing and filing with clerk, 23-1611
method of setting up, 23-1608
sealing and locking of machine after election, 23-1611

ELECTRICIANS
Appeals from state electrical board, 66-2813
Appliance sales and connections exempt from license requirements, 66-2812
Apprentices, registration with board, 66-2817
exemption from license requirement, 66-2815
scope of work permitted apprentice, 66-2812
Definition of terms, 66-2803
Exemptions from provisions of act, 66-2812
License required to work as electrician or contractor, 66-2806
annual license fees, 66-2815
contractors to be licensed annually, 66-2814
educational requirements for license, 66-2807
examination of applicants for license, 66-2807
exemptions from license requirements, 66-2812
experience required for license, 66-2807
schooling substituted for experience, 66-2815
expiration of licenses, 66-2807
fees for licenses
contractor's annual fee, 66-2814
disposition and use of fees, 66-2819
examination fees, 66-2815
municipal licensees, licensing without examination, 66-2811
previously qualified electricians, licensing without examination, 66-2816
reciprocal licensing of nonresidents, 66-2809
renewal of licenses, 66-2807
temporary permits, issuance and duration, 66-2810
unauthorized use of designation as electrician, 66-2808
Municipal regulations governing electrical installations, 66-2818
National Electrical Code to govern installations, 66-2802
Penalties for violation of act, 66-2820
Purpose of electrical safety law, 66-2802

References are to Title and Section numbers

ELECTRICIANS (Continued)
Receipts under act, deposit and use, 66-2819
Short title of act, 66-2801
State electrical board, composition, appointment, terms and compensation of members, 66-2804
oath of members of board, 66-2805
organization and powers of board, 66-2805
Violations of act, penalties, 66-2820

ELECTRIC LINES
Financing statements of utility, contents and place of filing, 87A-9-302.2
definition of terms, 87A-9-302.1
Uniform Commercial Code, application, 87A-9-302.3
Tampering with or tapping lines, penalty, 94-3203

EMBALMERS
See MORTICIANS AND FUNERAL DIRECTORS, 66-2701 to 66-2717

EMINENT DOMAIN
Answer of defendant, filing and contents, 93-9910
Assessment of compensation, allowance for removal of personal property, 93-9913
Commissioners, appointment and meeting, 93-9912
Flood control projects, acquisition by county or municipality for, 89-3303
Preliminary condemnation order, 93-9911
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A
Urban renewal, power of municipality, 11-3908

EMPLOYERS AND EMPLOYEES
Discrimination in employment, freedom from as civil right, 64-301
definition of terms, 64-302
denial of right to employment as misdemeanor, 64-303
Occupational disease act, 92-1301 to 92-1368
Winter work programs, 41-1901 to 41-1907—See WINTER WORK PROGRAMS

ENGINEERS AND LAND SURVEYORS
Co-ordinate system, 67-2011 to 67-2019—See CO-ORDINATE SYSTEM
Corner recordation act, 67-2001 to 67-2010—See PROPERTY, Real property, corner recordation
Corporations for practice of professional engineering, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Employment of personnel by board of registration, 66-2333
Investment advice exempt from securities act, 15-2004
Moneys received by board of registration, deposit and use, 66-2333
Secretary of board of registration, salary, 66-2333

ESTATES AND PROBATE PROCEEDINGS
Appraisers of estate, appointment and compensation, 91-2202
Contest of probate
motions filed against contest, 91-901
petition filed after admission to probate, 91-1101
time within which contest to be filed, 91-1107
Devise or bequest to trustee of inter vivos trust created by testator, validity, 91-321
Escheated estates
deposit of money and property in agency fund, 91-502, 91-523
holding by state treasurer subject to claims, period, 91-502
investment of moneys pending proceedings, 91-504
legal representation of treasurer, 91-512
sale of property
agent, property held by, 91-507
order by court for sale, 91-504
personal property, manner of sale, 91-505
disposition of proceeds, 79-813
real property, manner of sale, 91-506
unclaimed property subject to escheat, 91-526

References are to Title and Section numbers

ESTATES AND PROBATE PROCEEDINGS (Continued)
Inheritance tax deductions, 91-4407
Real estate brokers' act, exemptions from, 66-1926
Support obligations of father of illegitimate child limited to those accrued before death of father, 93-2901-4

ESTOPPEL
Affirmative defense, M. R. Civ. P., Rule 8(c)
Uniform Commercial Code supplemented by general provisions of law, 87A-1-103

EVIDENCE
Accident reports confidential, 32-1213
Amendment of pleadings to conform to evidence, M. R. Civ. P., Rule 15(b)
Certificate of compliance or noncompliance with provisions of occupational disease act, 92-1356
Criminal procedure, production and suppression of evidence, 95-1801 to 95-1806—See CRIMINAL PROCEDURE, Evidence
Depositions, M. R. Civ. P., Rules 26 to 32—See DEPOSITIONS
criminal procedure, 95-1802
Discovery, M. R. Civ. P., Rules 33 to 37—See DISCOVERY
criminal procedure, 95-1803
Exceptions to rulings of court unnecessary, M. R. Civ. P., Rule 46
Harmless error in admission or exclusion, effect on judgment or order, M. R. Civ. P., Rule 61
Motions, evidence presented on hearing of motions, M. R. Civ. P., Rule 43(e)
Notices, construction according to ordinary acceptation of terms, 93-401-22
Offer of proof, recording in case evidence excluded, M. R. Civ. P., Rule 43(c)
Official records, method of proof, M. R. Civ. P., Rule 44
Pre-trial conference, agreements as to evidence, M. R. Civ. P., Rule 16
Radar concerning motor vehicle violations, 32-2150.1
Stenographic transcripts of previous evidence, M. R. Civ. P., Rule 80
Subpoena for production of evidence, M. R. Civ. P., Rule 45(b)
Variance from pleadings, amendment of pleadings, M. R. Civ. P., Rule 15(b)

EXAMINERS, STATE BOARD OF
Composition of board, 82-1101
Liquidated claims not to be processed by board, 82-1101
Record of proceedings, 82-1105

EXCHANGE
Uniform Commercial Code, applicability, 74-505

EXECUTION
Compensation under occupational disease act exempt from, 92-1329
Delivery of possession, writ to secure, M. R. Civ. P., Rule 70
Documents of title covering goods, surrender or injunction required for execution against, 87A-7-603
Game wardens' retirement benefits, exemption from levy, 68-1420
Judges' retirement benefits, exemption from levy, 93-1126
Partnership interest, execution against, 93-5811
Sales under execution validated despite defects, 93-5846
Statutes govern execution, M. R. Civ. P., Rule 69
Stay of proceedings to enforce judgment, M. R. Civ. P., Rule 62
Supplementary proceedings, application of rules of civil procedure to, M. R. Civ. P., Rule 81(a), Table A
Unit ownership property, application of exemptions to, 67-2341
Waiver of statutory exemptions in unsecured note not enforceable, 93-5813.1

EXECUTION OF SENTENCE IN CRIMINAL CASES
See CRIMINAL PROCEDURE, Sentence and judgment, execution of sentence, 95-2301 to 95-2312

EXECUTORS AND ADMINISTRATORS
Action brought without joining beneficiaries as parties, M. R. Civ. P., Rule 17(a)

References are to Title and Section numbers

EXECUTORS AND ADMINISTRATORS (Continued)
Bond required, exceptions, 91-1702
Bulk Transfer chapter inapplicable to sales by, 87A-6-103
Investments, retention permitted when received from source other than purchase, though not qualified investment, 86-327
Justices and judges not to act as executor or administrator for compensation, 93-902
Real estate brokers' act, exemptions from, 66-1926
Sale of property in good faith, validation, 91-4324, 91-4325

EXEMPTIONS FROM EXECUTION
See EXECUTION

EXPERIMENT STATIONS
Forest and conservation station, reports and disposition of income, 28-304

EXTRADITION
Nonsupport, extradition for, 93-2601-7
prerequisites to extradition, 93-2601-8

F

FACTORS
Lien of factors, 87A-9-101 to 87A-9-507—See SECURED TRANSACTIONS

FAIR TRADE
Cigarette pricing, 51-301 to 51-314—See CIGARETTE SALES

FEES
Boiler engineer's license, 69-1512
Clerk of district court, enumeration, 25-232
naturalization fees paid to county treasurer for credit to general fund of county, 25-210
probate proceedings, 25-233
Constables, enumeration, 25-309
Cooperative associations
amendment of articles, filing, 14-204
articles of incorporation, filing, 14-201
certificate of incorporation, issuance, 14-204
Cooperative marketing associations, filing fees, 14-422
Corporate consolidation or merger, filing of agreement, 15-1901
County clerks, enumeration, 25-231
County farm bureaus, filing of articles and issuance of certificate, 16-1303
Insurance code, fees collectible under, 40-2726
Jurors' fees, 25-401
Justices of peace, fees collected by
civil actions, 25-301
criminal actions, 25-303
Legislative proceedings, fee for receiving one complete set of, 43-902
Petroleum products corporations, filing of agreement for merger, 15-1801
Recording marks and brands of livestock, 46-609
Refrigerated lockers, license fee, 69-2804
Rural electric and telephone cooperatives, filing fees, 14-527
Secretary of state, fees collectible by enumerated, 25-102
Water users' associations exempt from payment, exception, 25-110
Witnesses' fees, 25-404

FELLOW SERVANT RULE
Affirmative defense, M. R. Civ. P., Rule 8(c)

FIDUCIARIES
Investments, retention permitted when received from source other than purchase, though not qualified investment, 86-327
Sale of property in good faith, validation, 91-4324, 91-4325
Voting of corporate shares, 15-2231

References are to Title and Section numbers

FINE ARTS' COMMISSION
Commission abolished, 44-528—See HISTORICAL SOCIETY OF MONTANA

FINES
Appeal, stay of execution, 95-2406
County school fund, fines paid into, 75-3706
Disposition of fines, 94-801-1
  juvenile traffic offenders, collections from, 94-801-2
Execution of, 95-2302
Imposition of, 95-2206
Lien of judgment to pay fine, 95-2208

FIREARMS
Children, use of firearms by prohibited, 94-3579

FIRE DISTRICTS
County attorney to act as counsel, 16-3101
Examination of books by state examiner, 82-1008

FIRE ESCAPES AND ALARMS
Permits for construction outside incorporated municipalities, fees, 69-1808
Plans of construction submitted to state fire marshal, 69-1808

FIRE HAZARDS
Proceedings for abatement, application of rules of civil procedure, M. R. Civ. P., Rule 81(a), Table A

FIRE MARSHAL, STATE
Acting fire marshal, 82-1208
Advisory commissions, appointment, members, 82-1201
Appointment and qualifications, 82-1201
Employees, appointment of assistants and clerical employees, 82-1208
Examination of buildings, authority to enter, 82-1218
Investigation of fires, 82-1209
Powers, 82-1202
Rules and regulations, promulgation of, 82-1202
  hearings, notice, publication, adoption, effective date, 82-1202.2
  standards of fire protection adopted, 82-1202.1
Special deputy fire marshals, 82-1208

FIRE PREVENTION ADVISORY COMMISSION
Appointment by commissioner of insurance, members, 82-1201

FISH AND GAME
Agents for selling licenses, compensation, inspection of accounts, 26-222
Aquatic insects, commercial exportation prohibited, 26-708
Big-game hunting
  nonresident licensee to be accompanied by resident, 26-303.2
  policy of state, 26-303.1
  private property, permission required for hunting on, 26-303.3
  violation of provisions as misdemeanor, 26-303.4
Clothing worn by big game hunters, 26-302
Construction projects affecting fish and game
  alternative plans and recommendations by fish and game commission, 26-1504
  arbitration of disputes, 26-1505
  assistance by fish and game commission in preparing plans, 26-1503
  emergency conditions, exception to requirements, 26-1506
  insufficiency of plans, notice to responsible agency, 26-1503
  investigation of plans by fish and game commission, 26-1503
  irrigation projects exempt from requirements, 26-1507
  notice to be given to fish and game commission, 26-1502
  plans and specifications to be furnished fish and game commission, 26-1502
  policy of state, 26-1501
  refusal by responsible agency to modify plans, 26-1505
  state water conservation board projects exempt, 26-1507
  vested water rights preserved, 26-1506

References are to Title and Section numbers

FISH AND GAME (Continued)
Contests based on size of animals unlawful, 26-811
Definitions, 26-201
Federal aid moneys, deposit and use, 26-121
Fish
methods of taking, 26-332
minors not required to have license, 26-215
reciprocal privileges granted to licensees of bordering states, 26-225
bodies of water covered by reciprocal privileges, 26-227
devices and equipment used under reciprocal privilege, 26-226
rules and regulations, 26-228
violations as misdemeanor, 26-228
restrictions concerning possession and sale, 26-332
Fish and game commission
appointment of members, 26-102
motorboat regulations—See MOTORBOATS
oath of office of director and wardens, 26-111
officers, 26-103
outdoor recreational resources, development, 62-401 to 62-404—See OUTDOOR RECREATIONAL RESOURCES
principal offices, 26-103
Fishing reservoirs, rules and regulations concerning health, safety and protection, 26-104
Fund abolished, 26-121
Furbearing animals, closed and open season, 26-321
Jackrabbits, hunting with artificial light, 26-215
Landowner's restricted liability to gratuitous licensee for hunting or fishing, 67-808
definition of recreational purposes, 67-809
Licenses
bear licenses, issuance to nonresidents, 26-202.5
big game, special licenses, 26-202.2
information to be included in license, 26-212.1
classifications, 26-202.1
exceptions, 26-202.1
fees, 26-202.1
disposition and use of fees, 26-121
license agents, compensation, 26-222
minors not required to have fishing license, 26-215
powers of holders of, 26-202.1
predatory animals, license not required for, 26-215
"resident" defined for purposes of, 26-202.3
Migratory bird reservations, consent to acquisition by United States, 83-113
Migratory game birds, exclusion from law providing permits for breeding game birds, 26-1201
Moneys received by commission, disposition and use, 26-121
Possession of illegally taken fish or game, misdemeanor, 26-701
Predatory animals, taking permitted without license, 26-215
Regulations and orders by commission, 26-301
Removal from state of illegally taken game, misdemeanor, 26-701
Seafood, sale by weight required, 90-613
Seasons and bag limits, authority of commission concerning, 26-104
Shooting preserves
amount of game recoverable under license or permit, 26-1605
area covered by preserves, 26-1602
classes of licenses and permits, 26-1612
fees for licenses and permits, 26-1604
game which may be hunted on preserve, 26-1603
inspections of preserves by commission, 26-1614
issuance of licenses or permits authorized for preserves, 26-1601
license required of shooters, 26-1611
limits established by preserve operators, 26-1606
lists of licenses and permits maintained by commission, 26-1612
location of preserves, 26-1602
posting of boundaries required, 26-1602
records required of operators, 26-1609

References are to Title and Section numbers

FISH AND GAME (Continued)
Shooting preserves (Continued)
registration of shooters and game taken, 26-1609
revocation of license or permit, 26-1613
rules and regulations, 26-1601
season when hunting permitted on preserves, 26-1607
size of preserves, 26-1602
species of game to be hunted on preserve, 26-1603
stocking of preserve required of operator, 26-1603
tagging of game taken, 26-1608
wild game, hunting on preserve permitted, 26-1610
Special licenses, 26-202.1
Taxidermist
license, 26-907
records required to be kept, 26-907
Wardens for enforcement of laws
appointment of wardens, 26-107
duties of wardens, 26-107
ex officio fish and game wardens, 26-114
oath of office, 26-111
qualifications of wardens, 26-107
retirement system
account in agency fund, establishment, 68-1408
contributions paid into account, 68-1405
control and investment of moneys in account, 68-1405
transfer of amounts from public employees' retirement account, 68-1408
actuarial investigations and valuations, 68-1406
beneficiary, designation and changes, 68-1421
board for administration of system, creation and composition, 68-1404
contributions to system
members, contributions by, 68-1409
payment into retirement account, 68-1405
state contributions, 68-1410
death benefits, 68-1418
employment, death attributable to, 68-1417
definition of terms, 68-1401
"state game warden," 68-1402
disability retirement allowance, 68-1414
dormant accounts, transfer to employer's account, 68-1428
effective date for commencement of system, 68-1407
errors, correction, 68-1423
establishment of system, 68-1403
exemption of benefits from taxation or process, 68-1420
false or fraudulent statements, penalty, 68-1423
involuntary retirement allowance, 68-1415
membership in system, 68-1407
military service, credit for, 68-1422
monthly payment of allowances, 68-1419
optional means of payment of benefits, 68-1427
public employees' retirement act inapplicable to game wardens, 68-1429
refund of contributions on resignation or discharge, 68-1416
rules and regulations for administration of system, 68-1406
service retirement, 68-1411
allowance on retirement, 68-1413
subrogation of state to claims against third persons, 68-1425
suspension or revocation of benefits, grounds, 68-1424
voluntary retirement on reduced allowance, 68-1412
workmen's compensation, benefits supplemental to, 68-1426
Waste of game animals prohibited, 26-307
Wild turkey
attaching of tag to turkey taken, 26-511
fee for tag, 26-510
tags for, issuing, 26-510
violation of act concerning, misdemeanor, 26-512

References are to Title and Section numbers

FIXTURES

Ownership of fixtures by landowner, exceptions, 67-1301
Security interests in fixtures, priority between, 87A-9-313

FLOOD CONTROL AND WATER CONSERVATION

County and municipal participation in projects
- acceptance of federal, state or other aid, 89-3304
- acquisition and condemnation of property, 89-3303
- alternative method of organization of projects, amendment or repeal of provisions limited, 89-3314
- assessment of property benefited, levy and collection, 89-3309
- authority for participation, 89-3301
- bond issues by counties or municipalities, 89-3312
- charges for services or facilities, authority of counties or municipalities, 89-3309.1
- contributions to right of way costs, acceptance, 89-3307
- costs, contemplated apportionment, 89-3305
- direction of project by state or federal government, 89-3306
- division of work into parts, 89-3311
- highway property, contracts for use, 89-3310
- indebtedness, contracting by counties or municipalities, 89-3312
- maintenance of works, counties and municipalities may assume, 89-3307
- public purpose of activities declared, 89-3302
- railroad property, contracts for use, 89-3310
- separate proceedings for parts of work, 89-3311
- street or road fund, allocation for costs, 89-3308
- supplementary nature of powers, 89-3313
- tax levy for payment of indebtedness assumed, 89-3312
- works with respect to which county or municipality may participate, 89-3301

FOOD AND DRUGS

Beef or veal, persons exempted from having meat inspected, stamped or being licensed, 46-504
Food, Drug and Cosmetic Act, 27-701 to 27-725
- adulterated or misbranded articles
  - additives to conform to regulations permitted, 27-713
  - condemnation proceedings, destruction of article, 27-706
  - correction of defect, bond of claimant, 27-706
  - definitions, 27-710, 27-711, 27-714, 27-715, 27-718, 27-719
  - detention or embargo of article, 27-706
  - nuisance, abatement of, 27-706
  - prohibited acts, penalties, 27-703, 27-705
- citation of act, 27-701
- cosmetic
  - adulterated cosmetic defined, 27-718
  - adulteration or misbranding, see adulterated or misbranded articles above
  - definition, 27-702
  - misbranded cosmetic defined, 27-719
- definition of terms, 27-702
- drug or device
  - adulterated drug or device defined, 27-714
  - adulteration or misbranding, see adulterated or misbranded articles above
  - curative properties, representation of, false advertising, 27-720
  - "device" defined, 27-702
  - dispensing of prescription drugs, 27-716
    - labeling requirements, 27-716
  - "drug" defined, 27-702
  - false advertising prohibited, 27-703, 27-705, 23-720
  - hallucinogenic drugs, prohibited acts, 27-724, 27-725
  - misbranded drug or device defined, 27-715, 27-716
  - narcotic drugs, law governing, 27-716
  - new drug, dispensing of
    - application required, exceptions, 27-717
    - labeling proposed, 27-717
    - "new drug" defined, 27-702
    - tested for safe use, 27-717

FOOD AND DRUGS (Continued)
Food, Drug and Cosmetic Act (Continued)
drug or device (Continued)
simulating mark or label prohibited, 27-703
substituting drugs without consent prohibited, 27-703
enforcement vested in state board of health, 27-721
examination of samples by state department of health for violations of act, 27-722
false advertising prohibited, 27-703
criminal penalties, exemptions, 27-705
what deemed false advertising, 27-720
food
adulterated food defined, 27-710
adulteration or misbranding, see adulterated or misbranded articles above
definition, 27-702
misbranded food defined, 27-711
permits for manufacture, processing and packing
conditions governing, 27-712
inspection of premises of permittee, 27-712
suspension and reinstatement, 27-712
standards, regulations establishing, 27-709
unwholesome food, condemnation or destruction, 27-706
hearings under act, conduct of, 27-721
inspection of buildings and premises by state department of health, 27-722
prohibited acts, enumeration, 27-703
criminal penalties, 27-705
hallucinogenic drugs, 27-724, 27-725
restraining by injunction, 27-704
regulations of state board of health
adoption, amendment, or repeal, procedure, 27-713, 27-721
factors considered, 27-713
hearings, when required, 27-721
effective date, 27-721
food and color additives, use of, 27-713
food standards, 27-709
notice of proposal to promulgate regulations, 27-721
reports of state department of health, 27-723
samples or specimens for analysis, securing by state department of health, 27-722
violations of act, penalties, 27-705
examination of samples to determine violations, 27-722
exemption of advertising media, 27-705
hallucinogenic drugs, prohibited acts, 27-724, 27-725
minor violations, prosecution not required, warning notice, 27-708
prosecution instituted without delay, 27-707
reliance on guaranty or undertaking as a defense, 27-705
right of defendant to be heard by department of health, 27-707
summary reports by state department of health, 27-723
Food service establishments
definition of terms, 27-612
diseased person not to handle food or work in establishment, 27-619
enforcement of act by state board, agreements with other agencies, 27-620
fraud, obtaining food with intent to defraud, penalty, evidence of intent, 94-1831
frozen food plants
definition, 27-612
game, beef or veal not properly stamped or tagged, operator to require signed declaration, 27-624
lien for rental on compartments, 27-623
loss of food, liability for, 27-622
owners and operators not responsible for violation of game laws by persons who rent lockers, 27-624
requirements on receipt of game and beef carcasses, 27-624
inspections by health officers and sanitarians, reports to department, 27-621
license from state department of health required, 27-613
application for license, form and contents, 27-614

References are to Title and Section numbers

FOOD AND DRUGS (Continued)
Food service establishments (Continued)
license from state department of health (Continued)
denial or cancellation of license
appeal from decision of state board, 27-618
grounds, 27-615
hearing, demand for, 27-616
notice in writing, 27-616
proposed plan of correction, effect, 27-617
expiration date, 27-613
granted as a matter of right, 27-613
license fee, 27-614
multiple-type establishment, 27-613
partial denial or cancellation, 27-615
nontransferable, 27-613
publicly owned establishments exempt, 27-613
regulation of establishments required to protect public health, 27-611
rules adopted by state board, 27-620
violations, penalties, 27-625
samples of food furnished by licensees for analysis, 27-621
violations of act, penalties, 27-625
corrective plan submitted, approval by department bars prosecution, 27-617
notice, proposed plan of correction, 27-617
Food stores, license required, 27-310
fees and expenses of board, 27-313

FORECLOSURE
Attorney fee to be allowed by court, 93-8613
Deficiency judgment, docketing, 93-6001
Parties to foreclosure action, 93-6001
Power of sale contained in mortgage, alternatives available, 93-6004
advertising required for sale under power, 93-6005
attorney fees allowed to mortgagee, 93-6007
redemption rights of mortgagor, 93-6006
Proceeds of sale, application, 93-6001
Sale of property directed by court, 93-6001

FORESTS AND FORESTRY
Bond of person engaged in cutting of forest products as to reduction or management of fire hazard, 28-404
Enjoining violations concerning disposal of slash, 28-407
Experiment station, reports and disposition of income, 28-304
Fire protection
classification of forest land for protection and assessment purposes, 28-109
compliance with protection requirements, what constitutes, 28-110
costs of protection, determination and assessment against land, 28-111
moneys available for fire protection, 28-123
deposit and payment of moneys, 28-124
plan for fire protection, preparation, 28-111
Reduction or management of fire hazards, 28-404
Sawmills on forest land, license application and fee, 81-1502
Slash and debris
certificate of clearance, 28-412
contracts for reduction or management of fire hazards, state forester may enter into, 28-410
contracts with forest protective agencies, 28-411
disposal of slash, 28-407
hazard reduction agreement, purchaser of forest products to insure compliance, 28-406
injunctions where slash and debris not disposed of properly, 28-407
methods of reducing hazards, 28-411
reduction, 28-405
reduction or management of fire hazard, 28-404
slash and debris along right-of-way, 28-405
state forester, supervision, 28-408

FORESTS AND FORESTRY (Continued)
Slash and debris (Continued)
state forest fire wardens, delegation of powers to, 28-409
violation of provisions, penalty, 28-405
State board of forestry, powers, 28-105
State forester, appointment, compensation and term of office, 81-1403
State forests
conservation appropriations and allotments, receipt by state treasurer, 81-1410
sale of timber, supervision and scaling by state forester, 81-1408
State lands in general, sale of timber from, 81-1601
Transportation of coniferous trees, bill of sale required, 28-701

FORFEITURES
Bail, forfeiture, procedure, disposition of judgment and execution, 95-1116, 95-1117
Disposition of fines and forfeitures, 94-801-1
juvenile traffic offenders, fines collected from, 94-801-2
Vehicles used in transporting stolen livestock, 94-35-204

FORGERY
Identification cards, false procurement, penalty, 94-2014

FRATERNAL BENEFIT SOCIETIES
See INSURANCE, Fraternal benefit societies, 40-5301 to 40-5359

FRAUD
Accommodations, obtaining with intent to defraud, penalty, evidence of intent, 94-1831
Affirmative defense in civil proceedings, M. R. Civ. P., Rule 8(c)
circumstances to be stated with particularity, M. R. Civ. P., Rule 9(b)
Obtaining money, property or service by false pretenses, 94-1805
Statute of frauds, 13-606—See STATUTE OF FRAUDS
Uniform Commercial Code supplemented by general provisions of law, 87A-1-103

FRUITS
Standard packages for sale of small fruit, 90-615

FUNERAL DIRECTORS
Licensing requirements, 66-2701 to 66-2717—See MORTICIANS AND FUNERAL DIRECTORS

FUR-BEARING ANIMALS
Production defined as agricultural pursuit, 3-110.1

FURNISHING BOARD
Board abolished, 82-3322

G

GALEN STATE HOSPITAL
See also STATE INSTITUTIONS
Cost of support, payment by resident or responsible person, 80-1601 to 80-1604
Industrial activities permitted, 80-1501 to 80-1503
Juvenile reception and evaluation center, committal, duties, transportation provided, 80-1704
Location of hospital, 80-1701
Management and control of hospital by department of institutions, 80-1401 et seq.
Purposes of hospital, 80-1701
Superintendent, qualifications, 80-1702
Transfer of patients from other institutions
Boulder river school and hospital, 80-2308
center for the aged, 80-2502
Transfer of patients to mental institutions, 80-1703
Tuberculosis treatment facilities to be maintained by hospital, 69-4317
charges for care and treatment of patients, 69-4316

References are to Title and Section numbers

GAMBLING
Parimutuel betting permitted at licensed horse races, 62-511
percentage of pool retained by licensee, 62-512
tax on bets, withholding by licensee, 62-513

GAME WARDENS
See FISH AND GAME, Wardens for enforcement of laws

GARBAGE
Disposal areas regulated, 69-4001 to 69-4010—See REFUSE DISPOSAL AREAS

GARNISHMENT
Availability of remedy before and during action, M. R. Civ. P., Rule 64
Compensation under occupational disease act exempt from, 92-1329

GAS COMPANIES
Financing statements of utility, contents and place of filing, 87A-9-302.2
definition of terms, 87A-9-302.1
Uniform Commercial Code, application, 87A-9-302.3

GEOPHYSICAL EXPLORATION
Restoration of surface to original condition required, 69-3304

GIFTS
Unsolicited goods deemed a gift, 67-1706.1

GONORRHEA
See VENEREAL DISEASE, 69-4601 to 69-4617

GOVERNOR
Adjutant general, appointment, 77-117
Chief budget officer, governor constitutes, 79-1012
Contracts under western interstate corrections compact, power to enter into, 94-8023
Director of budget, appointment, 79-1012
Industrial accident board member, appointment, 92-104
Interstate compact on juveniles, appointment of administrator, 10-1002
Method of selecting in event of enemy attack and person in line for succession unable to act, 82-1309
Post-attack resource management, powers and duties, 77-1504 to 77-1506
Post-enemy-attack, succession to governorship, V, 46; 82-3802
Salary, 25-501
State board of forestry, members, appointment, 28-101
Water resources board, ex officio member of, 89-103
Wheat research and marketing committee, appointment, 3-2905
removal of members, 3-2907

GRAND JURY
Challenge of panel or juror, 95-1403
Charge by court, 95-1404
Composition and drawing of jury, 95-1401
Discharge upon completion of business, 95-1404
Disclosure of proceedings, restrictions and requirements, 95-1409
Dismissal of indictment, motion on grounds jury not selected, drawn or summoned according to law, 95-1402
Evidence before grand jury, requirements, 95-1408
Foreman, appointment, powers and duties, 95-1403
Indictment
amending charge, 95-1505
endorsement as "a true bill," 95-1410
evidence required to find, 95-1408
finding and presentment, 95-1410
form of charge, 95-1503
joinder of offenses and of defendants, 95-1504
number required to find indictment, 95-1401, 95-1410
prior conviction, charge of, notice and procedure, 95-1506

References are to Title and Section numbers

GRAND JURY (Continued)
Number of regular jurors and alternate jurors, 95-1401
Objections to panel or juror, 95-1402
Powers and duties of jury, 95-1405
Proceedings before jury, who may give advice, who may be present, transcript of testimony, 95-1406
Secrecy of proceedings, 95-1409
Subpoena of witnesses, issuance, 95-1407
Summoning grand juries, discretion of district judge, 95-1401

GRASS CONSERVATION
Commission expenses and compensation of members, 46-2306
Fees imposed against districts, disposition, 46-2331

GRAZING DISTRICTS
Appeal procedure, application of rules of civil procedure to, M. R. Civ. P., Rule 81(a), Table A

GROUND WATER
See WATERS AND WATER RIGHTS, Ground water regulation, 89-2911 to 89-2936

GUARDIANSHIPS
Action brought without joining ward as party, M. R. Civ. P., Rule 17(a)
Appointment of guardian ad litem, M. R. Civ. P., Rule 17(c)
Guardian for receiving public welfare aid to dependent children payments, 71-509
Investments, retention permitted when received from source other than purchase, though not qualified investment, 86-327
Sale of property in good faith, validation, 91-4324
Service of process on guardians, M. R. Civ. P., Rule 4D(2)

H

HABEAS CORPUS
Appeal to supreme court from order discharging petitioner, 95-2714
Application by petition, contents, verification, 95-2703
Bail, habeas corpus to obtain admission to, 95-2702
Contempt of court for refusal to obey, 95-2706
Contents of writ, 95-2707
Discharge of person detained, 95-2713
Eligibility for writ, 95-2701
Grounds for issuance, no release for technical defects, 95-2716
Hearing
evidence, depositions authorized, 95-2712
summary hearing authorized, 95-2711
Issuance of writ, by whom issued, 95-2704
granting without delay required, 95-2705
writ and process issued and served at any time, 95-2715
Obedience to writ, refusal, contempt of court, 95-2706
Petition for writ, contents, verification, 95-2703
Post-conviction hearing, 95-2601 to 95-2608—See CRIMINAL PROCEDURE, Post-conviction hearing
Production of person detained required, exception, 95-2710
Return of person on whom writ served
contents, 95-2709
courts, justices or judges before whom returnable, 95-2704
hearing on return, 95-2711
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A
Service of writ, 95-2708
writ and process issued and served at any time, 95-2715
Supreme court proceedings, M. R. App. Civ. P.—See SUPREME COURT, Original proceedings in supreme court

References are to Title and Section numbers

HAIL INSURANCE, STATE
Account in agency fund created, 82-1511
Borrowing power of state board, 82-1517
Claims for losses, appraisal, arbitration and appeal, 82-1516
Compensation of board members and employees, 82-1519
Counties, payments to, 82-1511
General fund, transfer of funds to, 82-1511
Payment of losses, 82-1517
Reinsurance authorized, 82-1505
Report to governor, 82-1519
Reserve, deposit and use, 82-1507
Tax levy
delinquent taxes, deduction from payment for losses, 82-1517
expenses to be covered by levy, 82-1507
refund of taxes in excess of needs, 82-1507
Warrants for money borrowed, 82-1517

HANDICAPPED PERSONS
Public buildings constructed to accommodate handicapped, 69-3701 to 69-3719—See PUBLIC BUILDINGS, Handicapped persons, construction of buildings to accommodate

HEALTH, LOCAL BOARDS OF
Appropriations to support boards, 69-4508
City board, composition, 69-4505
City-county board, agreement and composition, 69-4506
County board, composition, 69-4504
Definition of terms, 69-4501
District board, agreement and composition, 69-4507
Federal funds, allocation to local boards, 69-4503
Financing of local boards, 69-4508
Powers and duties of boards generally, 69-4509
Supervision by state board of health, 69-4502
Tax levy for support of board, 69-4508
Violation of rules or order, penalty, 69-4519
Visiting nurse services provided by board, 69-4512

HEALTH OFFICERS
Appointment by local board, 65-4509
state board to appoint after failure by local governing board, 69-4511
Communicable diseases to be reported to health officer, 69-4514
diseased prisoners, removal from jail, 69-4516
Law enforcement officers to assist in enforcement, 69-4513
Obstructing performance of duties unlawful, 69-4517
penalty, 65-4519
Powers and duties in general, 69-4510
Violation of orders, penalty, 69-4519

HEALTH SERVICE CORPORATIONS
Organization under Nonprofit Corporation Act, 15-2304
State employee group insurance plans, 40-3905.1

HEALTH, STATE BOARD OF
See DEPARTMENT OF HEALTH, Board of health

HIGHWAY PATROL
Appeals from supervisor, application of rules of civil procedure, M. R. Civ. P., Rule 81(a), Table A
Chief of patrol, appointment, 31-104
Reserve patrolmen, filling vacancies, 31-105
Retirement system
actuarial investigations and data, 31-206
administration of act, 31-206
definition of terms, 31-201
payments into retirement account, 31-205
members, contributions by, 31-209
state contributions from driver's license fees, 31-210

References are to Title and Section numbers

HIGHWAY PATROL (Continued)
Retirement system (Continued)
rules and regulations, 31-206
surplus moneys in account, investment, 31-205
Vehicle equipment safety compact, duties under, 32-21-166 to 32-21-175—See MOTOR VEHICLES, Equipment safety compact ratified

HIGHWAYS, BRIDGES AND FERRIES
Abandoned vehicles, removal and sale, 53-901 to 53-909—See MOTOR VEHICLES, Abandoned vehicles
Advertising regulation along highways, 32-4701 to 32-4714—See Zoning regulation along highways, below
Beautification of highways
expenditure of funds
nonmatching funds, limitation to, 32-2425
purposes for which federal funds expended, 32-2423
land acquired, extent of interest and methods of acquisition, 32-2424
purposes of act, 32-2422
Checking stations along highways authorized, 32-2419
co-operation by highway commission with other agencies required, 32-2421
major highways entering state, checking stations required, 32-2420
Classes of highways enumerated and defined, 32-2301
Controlled access facilities
commercial enterprises prohibited on public land, 32-2009.1, 32-4310
definition of terms, 32-4302
traffic regulatory act, 32-2119
designation of highway by state highway commission, 32-4303
local authorities empowered to make designations, 32-4305
local authorities, when consent required for designation, 32-4304
design of facilities, powers of highway authorities, 32-4306
driving violations on facility, penalty, 32-4311
grade crossing elimination, powers of highway authorities, 32-4307
intersections with facilities, power of authorities to permit, 32-4307
interstate sign manual, adoption for use on controlled access highways, 32-2133
plan for proposed highway, filing with county clerk, 32-2413
policy of state, 32-4301
resolution designating highway, findings and statements to be included, 32-4303
local authorities empowered to pass resolutions, 32-4305
right of way acquisition for highway, 32-2006, 32-3920
county acquiring property, 32-4018
service roads, design, construction and regulation, 32-4308
signs required to show points of ingress and egress, 32-4309
traffic regulation, powers of local authorities, 32-4305
violation of traffic regulations, penalties, 32-4311
County bonds
amortization bonds preferred, provisions for repayment, 32-3806
emergency repairs after disaster, limitation on amount of bond issues, 32-3804
inability of county to pay total indebtedness, refunding agreements, 32-3802
interest rate on bonds, 32-3805
maximum amount of indebtedness outstanding, 32-3801
additional limitation except for emergency and refunding purposes, 32-3804
purposes for which bonds may be issued, 32-3801
single purpose defined, 32-3803
redemption of bonds before maturity, provision for, 32-3805
refunding bonds authorized, 32-3801
inability of county to pay total indebtedness, 32-3802
maximum term of refunding bonds, 32-3805
serial bonds permitted, provisions for repayment, 32-3806
term of bonds limited, 32-3805
County bridges
bond issues for construction of bridges, 32-2903
contracts for work on bridges to be let by board, procedure and requirements, 32-4204
minimum amount to be done by contract, 32-2802

References are to Title and Section numbers

HIGHWAYS, BRIDGES AND FERRIES (Continued)
County bridges (Continued)
election to authorize bridge construction, 32-2903
intercounty bridges, construction and maintenance, 32-2906
maintenance as responsibility of county commissioners, 32-2901
management and control of bridges by commissioners, 32-2905
municipalities, responsibility for construction and maintenance within, 32-2902
police regulation of bridges, 32-2905
repair of bridges, duty of commissioners, 32-2904
state highway personnel assisting county commissioners, 32-2502
stream beds and banks, repair to protect bridge, 32-2905
street or suburban railway sharing bridge, sharing of costs, 32-3603
tax levy on property in county for bridge construction and maintenance, 32-3602
additional levy on approval by voters in election, 32-3605
municipality, special levy for bridge in, 32-3604
County motor vehicle fund, license and registration fees paid into, 32-3701, 53-122
city road fund in population centers, segregation, 32-3702
use of city road fund, 32-3703
city road fund other than in population centers, segregation, 32-3704
use of city road fund, 32-3705
transfer of remaining funds to county road fund, 32-3702, 32-3704
use of county road fund, 32-3706
County roads
accounts of labor, equipment and materials furnished, 32-3003
appropriations for expenditures within district, 32-2812
auto passes on county roads, construction and maintenance, 32-2811
state or federal highway, pass at connection with, 32-2810
bonds, power of commissioners to issue, 32-2802
cattle guards, appurtenances and gates adjacent to county roads, 32-2802
certification of labor, equipment and materials furnished, 32-3003
continuation in effect until properly abandoned or vacated, 32-4014
contracts for work on roads to be let by board, 32-4201
acceptance of work required for completion of contract, 32-4203
advertising for bids, 32-4201
bond required of bidders, 32-4202
bond required of contractor, 32-4203
minimum amount to be done by contract, 32-2802
preference given to resident bidders, 32-4202
wage scale required of contractor, 32-4202
definition, 32-2301
districts, division of county into, 32-2801
drains and ditches, construction and protection, 32-3007
employment of laborers by superintendent, 32-3006
expenditures in road districts limited by quarterly apportionments, 32-2812
Federal-aid system, contracts for county work on, 32-2804
guideposts, erection, 32-2801
improvement district proceedings, 32-3101 to 32-3131—See Local improvement districts, below
information to be furnished to highway commission, 32-2815
inspections and reports on county road work, 32-2805
machinery for road work, purchase by county, 32-2806
use of machinery within municipality, 32-2807
material for road building, acquisition, use and disposal, 32-2806
obstructions, duty of commissioners to remove, 32-2904
opening, discontinuing or changing road
canal or ditch crossing, duty of owner to prepare, 32-4013
damages determined by board, 32-4006
payment of damages from county fund, 32-4008
eminent domain on failure to reach agreement as to damages, 32-4007
investigation by board of desirability of action, 32-4004
joint action required on county line roads, 32-4002
notice by board of decision on proposed action, 32-4004
notice to road supervisor of action, 32-4010

References are to Title and Section numbers

HIGHWAYS, BRIDGES AND FERRIES (Continued)
County roads (Continued)
opening, discontinuing or changing road (Continued)
petition required for action, 32-4001
contents of petition, 32-4003
number of signatures required on petition, 32-4002
railroad crossing, duty of railroad owner to prepare, 32-4013
recording of findings, plat, and surveyor's report, 32-4011
section or subdivision lines, petition to change road to, 32-4009
survey and platting of road to be opened, 32-4005
payment of claims on superintendent's certificate, 32-3004
plat books prepared by surveyor, 32-2803
powers of county commissioners in general, 32-2801, 32-2802
reports by county commissioners to highway commission, 32-2801
right of way, power of county commissioners to acquire, 32-2802
secondary road information to be given county commissioners by highway commission, 32-2608
seeding of right of way areas along county roads, 32-2813
special fuel dealers and users licenes tax, disposition of funds, 84-1840
state land equalization payments, allotment from, 81-1120
state personnel assigned to assist commissioners, 32-2502
stock lanes, establishment and maintenance, 32-4015
subdivision and section lines, roads to follow when practicable, 32-2809
superintendent of roads, appointment by board of commissioners, 32-2803
bond filed by superintendent, 32-3001
compensation of superintendent, 32-3001
duties of superintendent in general, 32-3002
oath of office, 32-3001
requisition and use of equipment, tools and implements, 32-3005
supervisor, employment by board of commissioners, 32-2803
tax levy on property in county for road construction and maintenance, 32-3601
additional levy on approval by voters at election, 32-3605
traffic limitations, power of commissioners to impose, 32-2802
transfer of county roads to state highway commission, 32-4016
weed control along county roads, 32-2814
width of roads prescribed, 32-2808
Debris, dumping on highway, 32-4410
Definition of terms, 32-2203
Emergency construction area
designation by county commissioners, 32-317
livestock not to run at large in area, 32-319
impounding of animals at large, 32-320
penalty for violations, 32-321
notice of designation of area, 32-318
removal of designation, 32-318
Encroachments on highway
abatement as nuisance by judicial action, 32-4408
notice to remove encroachment, manner of giving, 32-4406
penalty for failure to remove after notice, 32-4407
prosecution of actions by county attorney, 32-4409
removal at expense of owner after notice, 32-4408
removal by road supervisor or county surveyor without notice, 32-4405
Excavations across highways, permit and bridging required, 32-4403
Federal aid highways
assent to provisions of Federal acts, 32-2401
canal or ditch crossing by highway, duty of owners to prepare crossing, 32-3918
continuation of highways until properly abandoned or vacated, 32-3917
contracts for implementation of Federal aid authorized, 32-2401
contracts for work on highways to be let by highway commission, 32-4101
bond required of contractors, 32-4103
competitive bidding required, 32-4102
counties to do work, agreements for, 32-4102
wage scale required of contractors, 32-4101

References are to Title and Section numbers

HIGHWAYS, BRIDGES AND FERRIES (Continued)
Federal aid highways (Continued)
county contracts for work on Federal-aid system, 32-2804, 32-4102
county road, transfer to Federal-aid system, 32-4016
designation of highways included in Federal-aid systems, 32-2407
highways not continuously in state, designation as part of Federal-aid system, 32-2408
railroad crossing by highway, preparation of crossing, 32-3918
rules necessary for compliance with Federal acts authorized, 32-2401
seeding along highways, 32-2412
utility facilities along Federal-aid and interstate highways, location, 32-2414
costs paid by highway commission, 32-2415
definition of terms, 32-2416
Ferries, county acquisition of property for, 32-4017
tax levy for construction, maintenance and repair, 32-1518
Ferries uniting two counties, construction, maintenance and operation, 32-2907
Flood control projects, contracts for use of highway property for, 89-3310
Funds available, allocation by highway commission
administrative and engineering expenses, limitation on expenditures for, 32-2602
bridge construction and reconstruction on Federal-aid system, special allocations for, 32-2604
districts to which funds apportioned, 32-2603
increase in funds allocated to particular district, 32-2610
interstate highway system, allocation of funds for, 32-2609
matching of federal funds, allocations for, 32-2605
primary federal-aid system, allocation of funds for, 32-2606
public information dissemination, limitation on expenditures for, 32-2602
secondary federal-aid system, allocation of funds for, 32-2607
urban federal-aid funds, allocation, 32-2611
Garbage, dumping on highway, 32-4410
Gasoline tax proceeds, use for highway purposes, 32-2601
Good Roads Day, annual observance, 32-4401
Herding on public highways, flagmen escorts and nighttime prohibitions, violations, 32-1021, 32-1022
Injuries to highways, signs and trees, punishment, 32-4402
Interstate highways, weight of vehicles on highways, controlled by federal law, 32-1123
Junkyards along roads
agreements with the United States, 32-4522
definition of terms, 32-4514
injunction against noncomplying junkyard, 32-4521
license required for operation, 32-4515
duration of license, 32-4516
fee for license, 32-4516
issuance of license, 32-4516
renewal of license, 32-4516
screening required for license, 32-4517
location of junkyards, restrictions, 32-4517
purpose of act, 32-4513
removal of junkyards, 32-4520
restrictive ordinances and regulations not abrogated by statute, 32-4523
screening of junkyards, specifications, 32-4517
acquiring land for screening purposes, 32-4520
existing junkyards, 32-4518
regulations governing screening, 32-4519
Legislative findings, 32-2201
Legislative policy and intent, 32-2202
Lewis and Clark highway designated, 32-2302
Littering highway as misdemeanor, penalty, 32-1629
garbage or debris blown from vehicle, penalty, 32-1629.1
posting notice of prohibition required, 32-1631
reward for informing on litterbugs, 32-1630
Livestock gates on county roads, 32-2811
state or Federal highway, gate at intersection with, 32-2810

HIGHWAYS, BRIDGES AND FERRIES (Continued)
Local improvement districts
assessment of benefits
apportionment of cost among parts of district, 32-3111
apportionment of costs and expenses to land, 32-3115
approval and certification of assessment roll by board, 32-3117
board to levy and collect assessment, 32-3101
confirmation of assessment roll, 32-3116
correction of errors in assessment roll, 32-3117
front-foot plan for levy of assessments, 32-3112
lien of assessment on land, 32-3101, 32-3111, 32-3117
notice of filing of assessment roll, publication, 32-3116
objections to assessment roll, hearing by board, 32-3116
parts into which district divided for assessment, 32-3110
roll of assessment, contents and filing, 32-3115
units for levy of assessment, 32-3112
valuation of lands according to tax assessment roll, 32-3106
audit of claims and accounts of district, 32-3129
board of county commissioners, powers and duties in general, 32-3101
bond issues
amount of bonds not to exceed costs and expenses, 32-3123
board of county commissioners to issue bonds, 32-3101
call of bonds before maturity, 32-3127
contractor, issuance of bonds to in payment for improvement, 32-3126
progress payments during construction, 32-3130
form of bonds, 32-3123
immediate payment of assessment to release lands from bonds, 32-3125
interest payments by treasurer, 32-3127
interest rate on bonds, 32-3118, 32-3123
maturity date of bonds, 32-3123
notice of assessment roll and proposed issue of bonds, 32-3124
redemption of land from bonds by immediate payment of assessment, 32-3125
remedies of bondholders on default, 32-3128
sale of bonds to pay costs and expenses, 32-3126
boundaries of district and parts of district, 32-3110
claims and accounts, approval, certification and payment, 32-3129
committee of supervisors, election and qualification, 32-3105
compensation of supervisors, 32-3113
duties of committee, 32-3106
construction or improvement of road
county performing construction or improvement work, 32-3114
inspector, appointment, duties and compensation, 32-3113
progress payments to contractor, 32-3130
contracts for work of improvement
acceptance of work required for completion of contract, 32-4206
advertising for bids, 32-4205
bond required of bidders, 32-4205
bond required of contractor, 32-4206
county not liable on contract, 32-4207
execution of contract by board of county commissioners, 32-4207
opening of bids, 32-4205
preference given to resident bidders, 32-4206
price of contract not to exceed cost estimates, 32-4205
progress payments authorized, 32-4206
wage scale required of contractors, 32-4206
costs of construction or improvement
county share of cost, maximum and order of payment, 32-3109
agreement with district to share costs, 32-3108
damage or injury to property, release obtained by committee and surveyor, 32-3106
estimates of cost prepared by superintendent of roads, 32-3106
reports of estimates to board, 32-3107
maximum costs allowed, 32-3107
damage or injury to property, releases obtained by committee and surveyor, 32-3106

HIGHWAYS, BRIDGES AND FERRIES (Continued)
Local improvement districts (Continued)
maximum damages, costs and expenses, 32-3107
meeting of road superintendent and landowners
conduct of meeting, 32-3105
election of committee of supervisors, 32-3105
notice of time and place of meeting, publication, 32-3104
resolution fixing time and place of meeting, 32-3104
municipalities, roads within not to be included, 32-3103
order creating improvement district, 32-3107
payment of cost and expenses
alternative plans available, 32-3118
immediate payment plan, notice of assessment roll to landowners, 32-3119
contents of notice, 32-3120
installment payment plan
bonds authorized for installment payments, 32-3122
collection of installments by treasurer, 32-3121
immediate payment of assessment to release land from bonds, 32-3125
notice of assessment and proposal to issue bonds, 32-3124
order of board levying assessment, 32-3121
redemption of land from bonds by immediate payment of assessment, 32-3125
sale of land for collection of delinquent installments, 32-3121
remaining funds after payment, refund, rebate or other disposition, 32-3131
petition for construction or improvement of road, contents and filing, 32-3102
plans and specifications prepared by road superintendent, 32-3106
refunds and rebates of assessments, 32-3131
remaining money after payment of costs and expenses, disposition, 32-3131
report of surveys and estimates by road superintendent, 32-3107
resolution of public interest to be passed by board on receipt of petition, 32-3103
survey and examination of road and lands by committee and surveyor, 32-3106
National park approach roads, agreements with federal agencies for, 32-2601
Overflow of highway, liability for damages and repairs, 32-4404
Policy of state, 32-2202
Ports of entry, establishment on highways authorized, 32-2419
co-operation by highway commission with other agencies, 32-2421
major highways entering state, checking stations required, 32-2420
Preference of Montana labor in awarding contracts, 41-701
penalties for violations, 41-703
Refuse, dumping on highway, 32-4410
Right of way acquisition for county roads
controlled access facility, acquisition for, 32-4018
conveyance of right of way, execution and recording, 32-4012
damages determined by board, 32-4006
payment of damages out of county fund, 32-4008
eminent domain proceedings after failure to agree on damages, 32-4007
recording of copy of judgment, 32-4012
estates which may be acquired by public, 32-3901
ferry, acquisition of property for, 32-4017
interest acquired by public, 32-4001
investigation by board of desirability of acquisition, 32-4004
joint action required on county line roads, 32-4002
notice by board of decision on proposed acquisition, 32-4004
opening and survey of road, 32-4005
petition of landowners required for acquisition, 32-4001
contents of petition, 32-4003
number of signatures required on petition, 32-4002
power of board of commissioners, 32-2802
Right of way acquisition for state highways
controlled access facilities, 32-3920
plan filed with county clerk, 32-2413
improvements after filing not compensable, 32-3908

HIGHWAYS, BRIDGES AND FERRIES (Continued)
Right of way acquisition for state highways (Continued)
eminent domain power, procedure for exercise, 32-3904
entire parcel acquired where portion not needed will have little market value, 32-3905
estates which may be acquired by public, 32-3901
future highway purposes, power to acquire for, 32-3906
irrigable lands rendered unusable, compensation paid, 32-3916
lease of unused property, disposition of rentals, 32-3906
materials needed for road building, right of commission to remove and use, 32-3907
plan filed with county clerk, 32-2413
improvements after filing not compensable, 32-3908
plat to be filed where part of parcel acquired, 32-3905
power of highway commission in general, 32-3902
purposes for which property may be acquired, 32-3903
resolution required for exercise of eminent domain power, 32-3904
surplus property disposition
demand by former owner that land be offered for sale, 32-3909
determination by commission that property is not needed, 32-3909
exchange for property needed, 32-3909
sale of property, power of commission, 32-3910
appraisal of property required before sale, 32-3911
conveyance of property to purchaser, 32-3915
minimum price of sale, 32-3911
notice of sale, publication, 32-3911
preferential right of previous owner to repurchase, 32-3912
private sale after unsuccessful public offering, 32-3913
public sale, when required, 32-3910
title not to pass until purchase price paid, 32-3911, 32-3913
toll bridge, acquisition for, 32-3919
Roadblocks, arrest at, 95-618
Secondary road information to be provided to county commissioners, 32-2608
Seeding along state and federal highways, 32-2412
Signs along highways, injury to or removal prohibited, penalty, 32-2134.1
posting of notices of act along highways, 32-2134.3
reward for informing on violators, 32-2134.2
Special fuel dealers and users license tax, disposition of funds, 84-1840
State highway commission
accounts maintained by commission, 32-2417
advice to county officers, 32-2410
appointment of members, 32-2402
bonds given by commission members, 32-2404
chairman of commission, selection and voting power, 32-2405
claims against commission, certification and payment, 32-2417
co-operation with local agencies, 32-2406
county commissioners, state personnel assigned to assist, 32-2502
districts from which members appointed, 32-2403
division of maintenance and control, organization and operation, 32-2503
employment, compensation and assignment of personnel, 32-2502
Federal aid, acts necessary to secure authorized, 32-2401
funds credited to account of highway commission, 32-3205
investigation of construction methods, 32-2410
meetings of commission, 32-2405
number of votes required for action, 32-2405
office to be open as required, 32-2409
per diem payments to members, 32-2404
political affiliations of members, 32-2403
powers of commission in general, 32-2406
qualifications of members, 32-2403
quorum of commission, 32-2405
records of commission, 32-2409
records, sale to public of records and publications, 32-3914
removal of members from office, grounds, 32-2403
reports to governor and legislative assembly, 32-2409
residence of members, 32-2403

HIGHWAYS, BRIDGES AND FERRIES (Continued)
State highway commission (Continued)
rules and regulations for government of commission, 32-2409
sale of personal property by commission, disposition of proceeds, 32-3914
sign manual for use on highways, adoption, 32-2133
state highway administrator, appointment, salary, duties and removal, 32-2501
state officers and employees not to be appointed to commission, 32-2403
statistical compilations by commission, 32-2410
terms of office of members, 32-2403
toll bridge authority, commission acts as, 32-2701
vacancies on commission, filling, 32-2403
weight of vehicles on highways, studies and testing by commission, 32-2411
State highways
bypassing of municipality, when consent of governing body required, 32-1628
canal or ditch crossing by highway, duty of owners to prepare crossing, 32-3918
continuation of state highway until properly abandoned or vacated, 32-3917
contracts for work on highways to be let by highway commission, 32-4101
bond required of contractors, 32-4103
competitive bidding, when required, 32-4102
counties doing work, agreements for, 32-4102
preference to resident bidders, 32-4102
wage scale to be paid by contractors, 32-4101
county road, transfer to state highway system, 32-4016
designation of highways by highway commission, 32-2407
municipalities, payment of construction and maintenance costs within, 32-1627
railroad crossing by highway, duty of railroad to prepare crossing, 32-3918
seeding along state highways, 32-2412
weed control by county board, 32-2814
Toll bridges
bond issues
additional bonds authorized if proceeds of original sale insufficient, 32-3504
construction fund, credits to and expenditures from, 32-3507
deposit of funds, 32-3506
disclaimer of general obligation of state, 32-3501
extension of time, covenant against, 32-2709
form of bonds, 32-3502
funds created for each bond series, 32-3506
lien of bondholders on proceeds of sale, 32-3505
maturity dates of bonds, 32-3502
negotiability of bonds, 32-3501
pledge of revenues permitted, 32-2707
proceeds of sale, restrictions on use, 32-3504
rate provisions, covenants as to, 32-2707
redemption before maturity, provisions for, 32-3502
registration of bonds, provisions for, 32-3503
remedies of bondholders, provisions for, 32-2709
replacement of lost, destroyed or mutilated bonds, provision for, 32-2709
reserve and contingency funds, provisions as to, 32-2707
reserve fund, provision for, 32-3509
resolution for issuance of bonds, contents and adoption, 32-3501
retirement of bonds, sinking fund used for, 32-3509
bridge becomes free after retirement, 32-2716
revenue fund, credits to, 32-3508
disbursements and transfers from revenue fund, 32-3509
sale of bonds, 32-3503
security of bondholders, provisions for, 32-2709
signatures valid though signer no longer in office, 32-3501
sinking fund, payments into and disbursements from, 32-3509
surplus proceeds of sale, disposition, 32-3504
temporary bonds, authority to issue, 32-3502
terms of bonds determined by authority, 32-3502
construction contracts by competitive bidding, 32-2712
cost estimates to be made by toll bridge authority, 32-2703
distance of bridge from existing free bridge, 32-2704
distance of new public bridges from existing toll bridge, 32-2715

References are to Title and Section numbers

HIGHWAYS, BRIDGES AND FERRIES (Continued)
Toll bridges (Continued)
engineer to have charge of bridges and toll collections, 32-2713
financial accounts and statements required, 32-2714
findings as to revenues and costs required for construction of bridge, 32-2703
free public bridge after retirement of bonds, 32-2716
highway commission as toll bridge authority, 32-2701
instruments of authority, execution and attestation, 32-2701
officers of toll bridge authority, 32-2701
petition required for construction within fifty miles of free bridge, 32-2704
action by toll bridge authority on petition, 32-2706
contents of petition, 32-2705
form and certification of petition, 32-2705
resolution of toll bridge authority on petition, 32-2706
sufficiency of petition, findings of toll bridge authority conclusive, 32-2706
powers of toll bridge authority, 32-2702
rates, tolls and charges, fixing by toll bridge authority, 32-2710
bond provisions for establishment of rates, 32-2707
exemption of governmental vehicles from payment of tolls, 32-2707
revenue fund, deposits in and transfers from, 32-2711
records open to public inspection, 32-2714
reserve and contingency funds, creation and deposit of moneys, 32-2708
bond provision requiring reserves, 32-2707
resolution of public convenience and necessity, requirement and contents, 32-2703
petition for construction within fifty miles of existing bridge, resolution on, 32-2706
retirement of bonds, bridge becomes free after, 32-2716
revenue fund, deposits in and transfers from, 32-2711
right of way acquisition for toll bridge, 32-3919
seal of authority, affixing to instruments and records, 32-2701
Traffic safety program
definition of terms, 32-4602
federal program, participation of state, 32-4605
funds, acceptance and use, 32-4606
governor to administer act, 32-4605
highway traffic safety board, creation, 32-4603
duties, 32-4605
organization, 32-4604
local programs, approval required, 32-4607
purpose of act, 32-4601
superintendent of public instruction responsible for driver education, 32-4605
Trees along highways, injury to, 32-4402, 94-3202
Utility facilities, location along Federal-aid and interstate highways, 32-2414
costs paid by highway commission, 32-2415
definition of terms, 32-2416
Violations of highway code, prosecution, 32-2418
Wage scales of contractors, 41-701
penalties for violations, 41-703
Water overflowing highway, liability for damages and repairs, 32-4404
Weed control along highways, 32-2814
Weight of vehicles on highways
co-operative studies by highway commission and other agencies, 32-2411
fines and penalty assessments, disposition of, 32-1131
interstate and defense highways, 32-1123
Width required for roads, 32-2808
Zoning regulation along highways
agreements with the United States, 32-4712
commercial zoning, areas and uses permitted, 32-4704
compensation for removal of sign, rights acquired, 32-4709
congressional action or nonaction, state law amended or null and void, 32-4714
declaration of policy, 32-4701
definition of terms, 32-4702

HIGHWAYS, BRIDGES AND FERRIES (Continued)
Zoning regulations along highways (Continued)
enforcement methods, 32-4711
guarantee against loss of federal funds, state highway commission to promulgate rules consistent with federal law, 32-4713
judicial proceedings to uphold state law, prosecution by attorney general, 32-4712
nonconforming signs, removal, 32-4708
obstruction of lawful signs prohibited, 32-4711
outdoor advertising, limitations, 32-4703
permits for private off-premise signs, 32-4707
signs, regulation of size, lighting and spacing, 32-4706
unlawful advertising, notice and removal, 32-4710
unzoned commercial and industrial areas, description, 32-4705

HISTORICAL SOCIETY OF MONTANA
Agency of state government, 44-516
Antique automobile collection, use of proceeds, 44-529
Board of trustees
appointment and terms of members, 44-519
duties of board, 44-523
executive committee, selection and duties, 44-521
mileage reimbursement of trustees, 44-522
powers of board, 44-523
qualifications of trustees, 44-520
Commercial enterprises authorized, 44-525
Continuation and perpetuation as "Montana Historical Society," 44-516
Definition of terms, 44-517
Director, powers and duties, 44-524
Fine arts' commission property, transfer to society, 44-528
Fund raising drives authorized, 44-525
Library independent of other libraries, 44-518
Microfilm division, creation and function, 82-3205
Moneys received by society, deposit and use, 44-527
Museum independent of other institutions, 44-518
Purposes of society, 44-516
Quarters in Veterans and Pioneers Memorial Building, 44-526, 78-202
Seal of society, description, 44-525

HOLIDAYS
Arbor day, date of observance, 75-2212
Bank closing, holidays on which permitted, 19-107
Good Roads Day, annual observance, 32-4401

HOMES FOR THE AGED
See NURSING HOMES

HOMICIDE
State criminal jurisdiction, 95-304
Venue, death and cause of death in different counties, 95-406

HORSE RACING
Commission created, composition and terms of members, 62-501
chairman of commission, selection, 62-503
duties of commission, 62-505
expenses of commission, 62-503
auditing and approval of expenses, 62-505
qualifications of members, 62-501
quorum of commission, 62-503
records and reports of commission, 62-504
removal of commissioner for cause, 62-501
supervisory powers of commission, 62-506
vacancies on commission, filling, 62-501
Days of week when racing permitted, 62-508

HORSE RACING (Continued)
Definition of terms, 62-502
Liability insurance required of licensees, 62-510
Licenses
cancellation or revocation of license, 62-507
conviction of crime precluding issuance of license, 62-507
fairs to comply with license requirements, 62-507
participants in race meet to have license, 62-505
penalty for unlicensed operation, 62-508
race meets, license required for, 62-507
Montana bred horses, special races for, 62-509
Parimutuel betting permitted, restrictions, 62-511
percentage of pool retained by licensee, 62-512
tax on bets withheld by licensee, 62-513
tax on gross receipts, collection and disposition, 62-514
Rules and regulations governing race meets and parimutuel system, 62-505
Supervisory powers of commission, 62-506
Violations of act as misdemeanor, 62-508
Visitations and inspections by commission, 62-506

HOSPITALS AND RELATED FACILITIES
Advisory council on hospitals and long-term care facilities, composition and appointment, 69-5214
meetings of council, 69-5215
terms of members, 69-5215
Alcoholic beverage, administration by hospital, 4-139
Alterations to be approved by state board, 69-5212
Child abuse reports required, 10-901 to 10-905—See CHILDREN AND MINORS, Abuse of children
Confidential nature of information received by state department, 69-5218
Counties, powers of commissioner, 16-1008A.
Discrimination prohibited in subsidized facilities, 69-5313
Fraud, obtaining accommodations with intent to defraud, penalty, evidence of intent, 94-1831
Freedom of choice of physician protected, 69-5217
Injunction for protection of health and welfare, 69-5220
Joint county hospitals authorized, 16-1040
definition of terms, 16-1039
terms of contract between counties, 16-1041
state aid in construction, application for, 69-5312
License required for operation of facility, 69-5203
application for license, procedure, 69-5205
definition of terms, 69-5201
denial, suspension or revocation of license, grounds, 69-5209
judicial review of denial, suspension or revocation, 69-5211
procedure for denial, suspension or revocation, 69-5210
federal facilities exempt from requirement, 69-5202
fee for license, 69-5204
inspection of hospital and issuance of license, 69-5206
penalty for violations of licensing chapter, 69-5221
records and reports required of facilities, 69-5219
Occupational disease reports, contents and filing, 69-4204
Phenylketonuria test required at birth, 69-4116
Rules and standards, adoption by state board, 69-5216
Survey and construction of hospitals
application for construction projects, agencies entitled to file, 69-5309
hearing and forwarding of application to federal agency, 69-5310
consolidated facilities serving two or more counties, application and construction, 69-5312
contracts with federal agencies authorized, 69-5302
definition of terms, 69-5301
federal funds, acceptance and use, 69-5311
plans for construction of facilities, preparation and submission, 69-5305
publication and hearing before submission, 69-5306
relative need specified in plan, 69-5308

HOSPITALS AND RELATED FACILITIES (Continued)
Survey and construction of hospitals (Continued)
rules for administration of chapter, 69-5304
standards for maintenance and operation of subsidized facilities, 69-5307
state department of health as principal agency, 69-5302
powers and duties of state department, 69-5303
Vital statistics information to be furnished by institution, 69-4430

HOTELS AND MOTELS
Co-operative agreements for enforcement of regulations, 34-306
Declaration of policy of regulatory law, 34-301
Definition of terms, 34-302
Fraud, obtaining accommodations with intent to defraud, penalty, evidence of intent, 94-1831
Inspections by state and local officers, 34-307
License required, 34-303
cancellation of license, procedure, 34-305
denial of license, procedure, 34-305
duration of license, 34-304
fee for license, 34-304
superseding other fees, 34-310
penalty, 34-309
subpoenas, authority of board to issue, 34-308
Penalty for violation of act or regulations, 34-309
Rules and regulations, promulgation, 34-306
Subpoenas, use in enforcement proceedings, 34-308

HOUSE TRAILERS
Fees in addition to registration and license fees, 32-3305, 53-615
Taxation of, 84-6601 to 84-6607—See TAXATION, Mobile homes

HUSBAND AND WIFE
Abandonment of wife without support as misdemeanor, 94-301
Alienation of affections
acts within state not to give rise to cause of action, 17-1203
cause of action abolished, 17-1201
litigation and threat of litigation prohibited, 17-1204
penalty for bringing action, 17-1206
settlement and compromises void. 17-1205
Conciliation of controversies
agreement between parties, reduction to writing, 36-204
budget for conciliation court, 36-203
citation of act, 36-201
confidential nature of communications, 36-203
counselor for conciliation, appointment and duties, 36-203
counties in which chapter applies, determination by district judges, 36-202
court of conciliation, designation, 36-203
powers of court, 36-205
definition of terms, 36-202
discretionary jurisdiction where no children involved, 36-204
fees not charged in conciliation proceedings, 36-204
filing of petition for conciliation, 36-204
hearings, time and place, 36-204
judge of conciliation court, selection, 36-203
jurisdiction of courts, 36-203
orders for conduct of parties, 36-204
petition for conciliation, form, contents, and filing, 36-204
powers of conciliation court, 36-205
privacy of hearings, 36-203
probation officer, assistance to conciliation court, 36-203
procedure for conciliation, 36-204
purposes of chapter, 36-202
reference of controversy to counselor, 36-203
short title of act, 36-201
stay of other proceedings during attempted conciliation, 36-204

HUSBAND AND WIFE (Continued)
Nonsupport of wife as misdemeanor, 94-301
Separate maintenance, action for
stay of proceedings to attempt reconciliation, 21-135.1
conciliation petition filed, 36-204
waiting period before decree granted, 21-135.1

I

IDENTIFICATION CARDS
False procurement, penalty, 94-2014

ILLEGALITY
Affirmative defense in civil proceedings, M. R. Civ. P., Rule 8(c)

ILLEGITIMATE CHILDREN
Disclosure of illegitimacy, court order required for, 69-4422
Legitimation, new birth certificate issued after, 69-4423
Support obligations of father, 93-2901-1 to 93-2901-11—See BASTARDY PROCEEDINGS

INDIANS
Criminal jurisdiction of Flathead Indian country
county commissioners' consent required for assumption of jurisdiction, 83-802
customs and culture of Indians to be preserved, 83-805
date of assumption of jurisdiction, 83-803
obligation of state to assume jurisdiction, 83-801
proclamation of governor assuming jurisdiction, 83-802
resolution of tribes requesting state jurisdiction, 83-802
rights, privileges and immunities preserved, 83-804
withdrawal of tribal consent to state jurisdiction, 83-806
Sale of imitation Indian articles
authentic articles, designation of, 85-303
definitions, 85-301
imitation articles to be identified as such, 85-302
violation, misdemeanor, 85-304
Schools, children to attend, 75-2907 to 75-2910—See SCHOOLS, Attendance

INDICTMENT
See GRAND JURY, 95-1401 to 95-1423; 95-1501 to 95-1506

INDUSTRIAL DEVELOPMENT
Bonds, issuance by county or municipality, terms and sale, 11-4103
proceeds of sales, use, 11-4107
refunding of bonds, 11-4106
security of bondholders, provisions for, 11-4104
Costs, determination by governing body, 11-4105
elements included in cost, 11-4107
Definition of terms, 11-4101
Lease of project, terms and conditions, 11-4105
cost of project, elements included, 11-4107
Mortgage to secure bonds, terms permitted, 11-4104
Powers of municipality or county, 11-4102
cumulative nature of powers, 11-4109
State planning board to give advice and information, 11-4110
Taxation of property, 11-4108

INDUSTRIAL HYGIENE
Definition of "occupational disease," 69-4201
Hazardous conditions, correction and prevention, 69-4202
Penalty for violations, 69-4205
Reports on occupational disease by physicians and hospitals, 69-4204
State department investigations and reports, 69-4203

References are to Title and Section numbers

INDUSTRIAL SCHOOL
See STATE INSTITUTIONS, Juvenile facilities, 80-2202 et seq.

INFORMATION
See CRIMINAL PROCEDURE, Information, 95-1301 to 95-1303; 95-1501 to 95-1506

INHERITANCE TAX
Adjustments of tax on payment of debts by legatee, 91-4418
Charitable exemption, 91-4414
Clear market value, tax imposed on, 91-4407
Deductions, 91-4407
Discount for payment within eighteen months, procedure in case of refund, 91-4416, 91-4418
Estimated amount of tax, deposit with clerk of court, 91-4418
Exemptions from tax, 91-4414
Lien of tax on property transferred, 91-4415
Proceeds of tax, disposition, 84-1901
Transfer of property within three years of death
appraisement and certification of value by county assessor, 91-4461
appraisement of value by state board of equalization, 91-4466
certificate of inheritance tax due, 91-4463
county clerk to furnish description to assessor, 91-4460
form provided to grantee, contents, 91-4462
inclusion of property in gross estate of decedent, 91-4465
maximum value subject to special procedure, 91-4467
payment by grantee of tax due, 91-4464
purpose of special procedure, 91-4467

INITIATIVE AND REFERENDUM
Attorney general's summary of measures for placement on ballot, 37-104.1

INJUNCTIONS
Appeal pending, suspension or modification of injunction, M. R. Civ. P., Rule 62(c)
Consumer loan act violations, enjoining, 47-227
Cosmetology licensing act, enjoining violations, 66-817
Dentistry, enjoining unauthorized practice, 66-911
Statutory provisions unchanged by rules, M. R. Civ. P., Rule 65
Supreme court proceedings, M. R. App. Civ. P.—See SUPREME COURT, Original proceedings in supreme court
ex parte proceedings in supreme court, M. R. App. Civ. P., Rule 40

INQUESTS
Coroner's inquests, 95-803 to 95-809—See COUNTY CORONER, Inquests

INSANE AND MENTALLY ILL
Boulder river school and hospital, 80-2301 to 80-2312—See BOULDER RIVER SCHOOL AND HOSPITAL
Criminal cases, provisions relating to competency of accused, 95-501 to 95-509—See CRIMINAL PROCEDURE, Competency of accused
Division of mental hygiene
clinics and community services, 80-2406
discrimination in providing services prohibited, 80-2409
powers and duties of division, 80-2403
public mental health programs, control by department of institutions, 80-2405
continuation of existing services, 80-2408
regions, conformity to state plan, regional mental health boards, duties, 80-2407
standards for mental health programs, 80-2405
state funds, limitation on appropriations, 80-2406
state hospital in division, 80-2401
supervisor of division, 80-2402
Glasgow center, staffing, supervision by board of institutions, 80-2410, 80-2411
Glendive mental retardation center, 80-2310 to 80-2312

References are to Title and Section numbers

INSANE AND MENTALLY ILL (Continued)
Hearing and examination
certificate by physicians, form, 38-207
moneys of person committed, custody and disposition, 38-210
rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A
Miles City center, staffing, supervision by board of institutions, 80-2410, 80-2411
Release of insane person to friends outside state, 38-107
Release of insane person to institution outside state, 38-108
Representation in actions by and against, M. R. Civ. P., Rule 17(c)
Service of process on persons of unsound mind, M. R. Civ. P., Rule 4D(2)
State hospital, 80-2401 to 80-2411—See WARM SPRINGS STATE HOSPITAL
State training school and hospital, 80-2301 to 80-2312—See BOULDER RIVER SCHOOL AND HOSPITAL
Warm Springs state hospital, 80-2401 to 80-2411—See WARM SPRINGS STATE HOSPITAL

INSECTS
Aquatic insects, commercial exportation prohibited, 26-708

INSTALLMENT SALES ACT
Complaints regarding violations, 74-605
Contents of installment contract, 74-607
Contracts
containing in more than one document, when authorized, 74-607
delivery to buyer, 74-607
refinancing, 74-610
required contents, 74-607
writing, requirements, 74-607
Definitions, 74-602
Delinquency charge, 76-607
Filling in of blank spaces after signing of contract, 74-607
Finance charges
computation, method, 74-608
maximum on motor vehicles, 74-608
maximum on service and goods other than motor vehicles, 74-608
Insurance, requiring of buyer, when authorized, 74-607
Investigative power of superintendent, 74-605
License of sales finance company
application, 74-603
banks, trust companies or savings and loan associations, excepted, 74-603
expiration, 74-603
fee, 74-603
license not transferable or assignable, 74-603
posting of license on premises, 74-603
required, 74-603
suspension, revocation or failure to renew
grounds, 74-604
hearing, 74-604
judicial review, 74-604
Prepayment, refund, 74-609
Refinancing of contract, 74-610
Refunds on prepayments, 74-609
Rules and regulations, 74-606
Secured transactions, application to, 87A-9-203
Secured Transactions chapter, effect on installment act, 87A-9-201
Short title, 74-601
Subpoena power of superintendent, 74-606
Superintendent
investigations, power, 74-605
powers, 74-606
Transfer of equity in goods by buyer, 74-607
Violations of act, penalties, 74-611
Waiver of provisions of act unenforceable and void, 74-612

References are to Title and Section numbers

INSURANCE

Adjusters
affidavit as to lost, stolen or destroyed license, 40-3331
attorneys excluded from definition, 40-3306
definition of term, 40-3306
examinations by commissioner, 40-2714
conduct of examination, 40-2715
expenses of examination, 40-2717
reports on examination, 40-2716
fees payable to commissioner, 40-2726
license required, 40-3327
acting without license, penalty, 40-3332
continuation of license, 40-3328
expiration of license, 40-3328
qualifications of licensee, 40-3327
refusal to continue license, 40-3329
return of license after expiration, suspension or revocation, 40-3331
revocation of license, 40-3329
procedure following revocation, 40-3330
suspension of license, 40-3329
procedure following suspension, 40-3330
out of state adjusters, when license not required, 40-3327
Advisory board contract, offer as inducement to insurance prohibited, 40-3513
Agents and solicitors
affidavit as to lost, stolen or destroyed license, 40-3331
appointment by insurer required, 40-3307
continuation of appointments, 40-3317
filing of appointments, 40-3317
termination of appointment, 40-3317
rights of agent following termination, 40-3318
Consumer Loan Act lender not to require insurance through particular agent, 47-214
corporations, licensing as agents, 40-3310
countersignature of policy required, 40-2822
commission of resident agent on policy originating outside state, 40-2824
issuance of policy at home or branch office, 40-2825
salaried personnel prohibited from countersigning, 40-2823
definition of terms
"agent," 40-3302
"life insurance agent," 40-3303
"solicitor," 40-3304
employees of agents and insurers excluded from definition, 40-3305
examination of affairs by commissioner, 40-2714
conduct of examination, 40-2715
expenses of examination, 40-2717
reports on examination, 40-2716
exchange of business, 40-3325
firms, licensing as agents, 40-3310
fraternal benefit society agents, 40-5344 to 40-5349—See Fraternal benefit societies, agents, below
group insurance, acts to implement excluded from definition, 40-3305
license required, 40-3307
acting without license, penalty, 40-3332
application for license, contents and filing, 40-3312
association of agents, licensing, 40-3311
contents of license, 40-3315
continuation of licenses, 40-3328
corporations, licensing, 40-3310
display of license in place of business, 40-3323
examination of applicants for license, 40-3313
conduct of examination, 40-3314
existing licenses, expiration and renewal, 40-2612
expiration of license, 40-3328
fees payable to commissioner, 40-2726
firms, licensing, 40-3310

References are to Title and Section numbers

INSURANCE (Continued)
Agents and solicitors (Continued)
license required (Continued)
forms prescribed and furnished by commissioner, 40-3307
issuance of license, 40-3315
number of licenses required of agent, 40-3316
qualifications of licensees, 40-3308
life insurance agents, 40-3309
refusal to continue license, 40-3329
return of license after expiration, suspension or revocation, 40-3331
revocation of license, 40-3329
procedure following revocation, 40-3330
separate license required for each life or disability insurer, 40-3316
suspension of license, 40-3329
procedure following suspension, 40-3330
temporary licenses, issuance, 40-3319
rights under temporary license, 40-3320
misappropriation of funds by agent as larceny, 40-3324
place of business to be maintained in state, 40-3323
premiums, reporting and accounting for, 40-3324
records to be maintained by agents, 40-3323
surplus line insurance, 40-3419
retaliatory tax provisions, 40-2826
revocation or suspension of insurer's certificate, effect on agent's authority, 40-2816
salaried employees of insurers excluded from definition, 40-3305
scope of chapter, 40-3301
sharing of commission, 40-3325
solicitors, rights and relationship with agent, 40-3321
surplus line agent, license, fee and bond, 40-3414
authority under license, 40-3415
revocation of license, 40-3422
vending machine licenses, 40-3322
Amount of insurance on one risk by one insurer limited, 40-2909
Annuity contracts, 40-3818 to 40-3825—See also Life insurance, below
deferred annuities incidental to life insurance not included in provisions, 40-3818
dividends, provision for, 40-3823
entire contract included in written contract, 40-3821
exemption from securities act, 15-2004
grace period for payment of premiums, 40-3819
incontestability clause, 40-3820
misstatement of age or sex, provision for adjustment of payments, 40-3822
participating contracts, provision for dividends, 40-3823
reinstatement provisions, 40-3824
reversionary annuities, standard provisions, 40-3825
single premium contracts, inapplicable provisions omitted, 40-3818
standard provisions required, 40-3818
Application for insurance
admissibility in evidence of application, 40-3712
alteration of application prohibited, exception, 40-3712
form of application, approval required, 40-3714
grounds for disapproval, 40-3715
insured must apply for life or disability insurance, exceptions, 40-3711
statements and descriptions in application, effect on contract, 40-3713
Arrest bond certificates, 95-1121 to 95-1123
Benefit certificate, offer as inducement to insurance prohibited, 40-3513
Benevolent associations
agents, appointment and licensing, 40-4909
officers as agents, 40-4910
amendment of articles, rules or contract, filing, 40-4907
annual statement of association, contents and filing, 40-4916
assessments of members
death benefit, assessment to pay, 40-4915
expenses, assessments to cover, 40-4913
death claims, numbering and payment, 40-4914
assessment of members for payment, 40-4915

References are to Title and Section numbers

INSURANCE (Continued)
Benevolent associations (Continued)
definition, 40-4902
exemption from general provisions of code, 40-2610
expenses, annual maximum, 40-4913
foreign associations excluded, 40-4906
laws applicable, 40-4901, 40-4917
"member" defined, 40-4903
"membership contract" defined, 40-4904
minimum membership, 40-4912
new associations prohibited, 40-4906
officers of association
agents, acting as without license, 40-4910
definition, 40-4905
number of officers permitted, 40-4908
receipt or evidence of payment to association to be issued, 40-4911
scope of chapter, 40-4901
treasurer, bond, 40-4908
Binders for temporary insurance, effect, 40-3726
Boycotts prohibited, 40-3508
Casualty insurance
assigned risk plan, 40-3630
definition, 40-2905
reserve for unearned premiums, 40-3005
sovereign immunity, waiver of defense required
policies issued to public agencies, 40-4402
state-owned properties, 40-4401
uninsured motorist coverage included unless rejected by insured, 40-4403
Claims for losses
acts by insurer not deemed waiver of defenses, 40-3733
forms for proof of loss to be furnished by insurer, 40-3732
Coercive practices prohibited, 40-3508
Commercial air operators required to carry insurance, 1-314
amount set by aeronautics commission, 1-315
continuation in force required, 1-318
evidence of insurance deposited with commission, 1-316
copies of policies acceptable as evidence, 1-317
rules established by commission, 1-319
unauthorized insurers' policies acceptable, 1-321
violation of act as misdemeanor, 1-320
Commissioner of insurance—See Department of insurance, below
Common owners, transfer of interest by one does not avoid insurance, 40-3708
Companies—See Insurers, below
Compliance with applicable provisions of code required, 40-2609
Consumer loan act, restrictions and limitations concerning with regard to consumer loans, 47-214
County funds, use to pay indemnity insurance premiums, 16-1001
Coverages not mutually exclusive, 40-2901
Credit life and disability insurance
amount of insurance permitted, 40-4206
application for insurance, copy delivered to debtor, 40-4209
authorized insurers only to issue policies, 40-4212
citation of chapter, 40-4202
claims for losses, 40-4213
competition not prohibited or discouraged, 40-4201
Consumer Loan Act, insurance required under, 47-214
contents of policy or certificate, 40-4208
definition of terms, 40-4204
enforcement powers of commissioner, 40-4215
forms, filing, approval and withdrawal, 40-4210
forms of insurance enumerated, 40-4205
judicial review of commissioner's orders, 40-4216
liberal construction of chapter, 40-4201
penalties for violation of commissioner's orders, 40-4217

References are to Title and Section numbers

INSURANCE (Continued)
Credit life and disability insurance (Continued)
policy or certificate to be delivered to debtor, 40-4208
premium rates, filing and compliance, 40-4211
limit on amount charged, 40-4211
purpose of chapter, 40-4201
refund of excess and unused premiums, 40-4211
scope of chapter, 40-4203
selection of policy or insurer left to debtor, 40-4214
term of coverage, 40-4207
time of delivery of policy or certificate to debtor, 40-4209
Death of insured, passage of property insurance to successor in interest, 40-3707
Deceptive practices prohibited, 40-3502
Definition of terms, 40-2602 to 40-2608
types of coverage not mutually exclusive, 40-2901
types of insurance, 40-2901 to 40-2908
Department of insurance
annual report by commissioner, contents, 40-2712
appeals from commissioner, 40-2725
appropriation of funds by legislative assembly, 40-2702
certificates and certified copies as evidence, 40-2708
commissioner
control and supervision of department, 40-2702
definition of "commissioner," 40-2605
delegation of authority, 40-2706
responsibility for acts of assistants and employees, 40-2706
seal of office, description and use, 40-2703
state auditor ex-officio commissioner, 40-2701
compensation of employees limited to that provided by law, 40-2705
contractual services, procurement by commissioner, 40-2704
creation of department, 40-2702
definition of "commissioner" and "department," 40-2605
employment and compensation of deputies and assistants, 40-2704
evidence produced before commissioner or examiner, 40-2718
examinations by commissioner
adjusters, 40-2714
agents and solicitors, 40-2714
conduct of examinations, 40-2715
expenses of examination, 40-2717
insurers, 40-2713
managers and promoters, 40-2714
reports on examinations, 40-2716
fees collectible for certificates, licenses and copies of documents, 40-2726
financial interest in insurers prohibited to employees of department, 40-2705
fire prevention advisory commission, appointment, 82-1201
hearings by commissioner
authority for hearings, 40-2720
demand for hearing, 40-2720
notice of hearing, 40-2722
orders on hearing, 40-2724
procedure on hearings, 40-2723
stay of action pending hearing, 40-2721
notices by commissioner, contents and service, 40-2711
orders of commissioner, contents and service, 40-2711
powers and duties in general, 40-2709
records of proceedings, 40-2707
rules and regulations, adoption, 40-2710
service of process through commissioner, 40-2818, 40-2819
witnesses before commissioner or examiner, 40-2718, 40-2719
Deposits through commissioner
amounts required, 40-2809
appraisal of assets deposited, 40-3208
assignment of securities to commissioner and successors, reassignment, 40-3207
bank or trust company as custodian, 40-3204

References are to Title and Section numbers

INSURANCE (Continued)
Deposits through commissioner (Continued)
custodial arrangements, 40-3204
deficiency in deposits, 40-3212
deposits subject to chapter, 40-3201
excess deposits authorized, 40-3210
income to be paid to depositor, 40-3209
inspection rights of depositor, 40-3209
levy on deposits, 40-3211
liability as to safekeeping of deposits with custodian, state and commissioner exempt, 40-3206
life insurance policy reserves, 40-3012
purpose of deposits, 40-3202
records as to assets and securities deposited, 40-3205
release of deposit, 40-3213
safe deposit boxes used for safekeeping of deposits, specifications, 40-3204
securities eligible for deposit, 40-3203
substitution of other eligible assets, 40-3209
time for which deposits held, 40-3213
Desist orders for prohibited practices, 40-3514
Disability insurance
age of applicant, acceptance of premiums after maximum is reached, 40-4032
apportionment of loss with other insurers, 40-4021
expense incurred benefits, 40-4020
autopsy, right of insurer to require, 40-4013
blanket disability insurance
applications and certificates not required, 40-4106
definition of term, 40-4104
persons to whom payable, 40-4107
required provisions of policy, 40-4105
bylaws of insurer, incorporation by reference in policy prohibited, 40-4002
change of beneficiary, rights reserved to insured, 40-4015
change of occupation, adjustment of premiums and benefits, 40-4017
charter of insurer, incorporation by reference in policy prohibited, 40-4002
claims for losses
forms for filing of claims, 40-4009
notice of claim, provision for, 40-4008
persons to whom payable, 40-4012
proofs of loss, 40-4010
time allowed for payment before bringing action, 40-4014
time of payment provision, 40-4011
conformity with state statutes provision, 40-4024
consideration to be expressed in policy, 40-4002
credit disability insurance—See Credit life and disability insurance, above
deduction of unpaid premiums from payment of claim, 40-4023
definition, 40-2903
earnings, relation to insurance, 40-4022
effective date of policy to be expressed, 40-4002
entire contract to be incorporated in policy, 40-4004
exceptions to be stated in policy, 40-4002
excess insurance with same insurer void, provisions for, 40-4019
excess risk, placement by agent with insurer other than that as to which licensed, 40-3326
foreign jurisdiction, conformity to requirements, 40-4030
format of policy, 40-4002
franchise insurance plan, 40-4033
grace period for payment of premiums, 40-4006
group disability insurance, eligible groups, 40-4101
direct payment for medical services, 40-4103
required provisions of policies, 40-4102
illegal occupation exclusion, 40-4025
inapplicable provisions, omission from policy, 40-4003
incidental to life insurance, not covered by chapter, 40-4001
incontestability provisions, 40-4005

References are to Title and Section numbers

INSURANCE (Continued)
Disability insurance (Continued)
intoxication exclusion, 40-4026
minors, power to contract for insurance, 40-3710
misstatement of age, adjustment of benefits, 40-4018
narcotics exclusion, 40-4026
nonconforming policies, construction, 40-4031
number of persons to be insured by one policy, 40-4002
older persons, extended insurance for, 40-5401 to 40-5408—See Health insurance for persons over 65, below
optional policy provisions, form required, 40-4016
order of required and optional provisions in policy, 40-4028
physical examination, right of insurer to require, 40-4013
physicians, freedom of choice, 40-4108
scope of practice not enlarged, 40-4109
reduction in indemnity to be stated in policy, 40-4002
reinstatement of lapsed policy, 40-4007
rejected risk, placement by agent with insurer other than that as to which licensed, 40-3326
renewal of policy, provision for insurer's right to refuse, 40-4006, 40-4027
required provisions, insertion in policy, 40-4003
reserve for unearned premiums, 40-3007
rules of insurer, incorporation by reference in policy prohibited, 40-4002
scope of chapter, 40-4001
substitutions for optional policy provisions, 40-4016
substitutions for required policy provisions, 40-4003
termination date of policy to be expressed, 40-4002
third party ownership permitted, 40-4029
violations of chapter, penalty, 40-4034
Discharge of insurer by payment, 40-3730
minor may give acquittance, 40-3731
Discriminatory practices prohibited
life and disability insurance, 40-3509
exceptions, 40-3511
property, casualty and surety insurance, 40-3512
Endowment contracts—See Annuity contracts, above
Exemption of proceeds from process
annuity contract proceeds, 40-3737
disability insurance proceeds, 40-3736
life insurance proceeds, 40-3734
group life insurance, 40-3735
False information as to terms of policy or condition of insurer, 40-3503 to 40-3505
False statements in applications and claims, penalty, 40-3522
Farm mutual insurers
accumulation of profits prohibited, 40-4839
agents, license not required, 40-4831
annual statement of affairs
contents and filing, 40-4832
exclusive report required, 40-4833
failure to file statement, 40-4833
presentation at annual meeting of members, 40-4822
applications for insurance to be in writing, 40-4843
forms filed with commissioner, 40-4844
articles of incorporation, contents and filing, 40-4808
amendment of articles, 40-4810
approval and endorsement, 40-4809
certified copies as evidence, 40-4811
assessment plan insurance, 40-4806
assessments against members
suit for collection, 40-4850
time payable, 40-4849
bylaws
adoption, amendment and revocation, 40-4817
binding effect on members, 40-4819
contents, 40-4818

INSURANCE (Continued)
Farm mutual insurers (Continued)
cancellation of insurance, 40-4826
cash premium plan, collection of premiums, 40-4806
certificate of authority required, issuance and renewal, 40-4816
churches, insurance on, 40-4846
claims for losses
action against insurer for collection, 40-4852
apportionment of payments when funds insufficient, 40-4851
arbitration by committee of reference, 40-4848
directors' and officers' liability for failure to pay, 40-4850
notice of loss, 40-4847
time of payment, 40-4849
commencement of corporate existence, 40-4809
community houses, insurance on, 40-4846
corporate powers in general, 40-4812
"county" insurer defined, 40-4802
declaration of intent to incorporate, filing, 40-4808
directors
election, qualification and term of office, 40-4828
general management of affairs of insurer, 40-4827
quorum, 40-4827
discriminatory rates prohibited, 40-4845
dividends, payments prohibited, 40-4839
educational purposes, expenditures of funds for, 40-4836
exemption from general provisions of code, 40-2610
fees payable, 40-4842
forms filed with commissioner, 40-4844
incorporators, number and property ownership required, 40-4807
investigation of affairs by commissioner, expenses, 40-4834
investment of funds authorized, 40-4835
laws applicable, 40-4801, 40-4853
maximum amount of insurance on single risk, 40-4804
meetings of members
annual statements, presentation at meeting, 40-4822
notice of adjourned annual meetings, 40-4823
place of meetings, 40-4821
membership
insurance of property required for membership, 40-4820
liability of members, limitations, 40-4825
minimum number of members required, 40-4820
proxies, 40-4824
voting rights of members, 40-4824
withdrawal of member, 40-4826
minimum amount of insurance applied for before commencement of business, 40-4813
officers
bonds of treasurer and secretary, 40-4830
election and terms of office, 40-4829
property insurable by farm mutual, 40-4803
public buildings, insurance on, 40-4846
rates, filing with commissioner not required, 40-4845
records, maintenance and availability, 40-4841
reinsurance, 40-4805
reserves required on cash premium plan, 40-4838
safety fund, creation and use, 40-4837
school buildings, insurance on, 40-4846
scope of chapter, 40-4801
"state" insurer defined, 40-4802
surplus funds required, 40-4815
deficiency, correction required, 40-4840
definition of "surplus," 40-4814
taxes payable, 40-4842
Fictitious groupings for preferred premiums prohibited, 40-3520

INSURANCE (Continued)
Fire prevention advisory commission, appointment by commissioner, 82-1201
Fraternal benefit societies
agents
applications for agent's license, 40-5346
compensation not allowed to agents of exempt society, 40-5305
definition of "insurance agent," 40-5344
expiration of licenses, 40-5347
license required, 40-5345
part-time agents exempt from license requirements, 40-5344
qualifications for agent's license, 40-5346
refusal to issue or renew license, grounds, 40-5346
renewal of licenses, 40-5347
revocation of license, 40-5349
salaried persons exempt from licensed requirements, 40-5344
suspension of license, 40-5349
termination of appointment, notice to commissioner, 40-5348
alien societies, admission to transact business in state, 40-5307
suspension, revocation or refusal of license, grounds and procedure, 40-5308
annual statement of affairs, form, filing and publication, 40-5337
penalty for failure to comply, 40-5339
articles of incorporation
amendments, procedure and filing, 40-5317
changes, binding effect on members, 40-5329
contents, 40-5309
failure to complete organization, articles void, 40-5311
filing with commissioner, 40-5310
attachment of benefits prohibited, 40-5327
beneficiaries of certificate, designation and change, 40-5326
bond for return of advance payments if organization not completed, 40-5310
cash surrender values, computation, 40-5325
certificate of authority, issuance and effect, 40-5313
certificate of benefits required, 40-5329
changes to articles, constitution or laws, binding effect on members, 40-5329
form to be filed with commissioner, 40-5330
prohibited provisions, 40-5331
standard provisions required, 40-5330
commissions to be paid only to agents or exempt persons, 40-5345
consolidation of societies, 40-5353
effect of consolidation, 40-5354
constitution and laws
amendments, procedure and filing, 40-5317
changes, binding effect on members, 40-5329
power to adopt and amend, 40-5314
waiver, authority to prohibit, 40-5318
definition, 40-5301
disability insurance, filing and approval of certificates, 40-5333
discrimination in rates or benefits prohibited, 40-5351
examinations by commissioner
domestic societies, 40-5340
foreign and alien societies, 40-5341
publication of reports deferred until after notice to society, 40-5342
exemption from general provisions of code, 40-2610
exemption from process of benefits, 40-5327
exempt societies, 40-5305
false and misleading statements, penalties and forfeitures, 40-5350
family coverage authorized, 40-5323
foreign society, admission to transact business in state, 40-5307
suspension, revocation or refusal of license, grounds and procedure, 40-5308
forfeiture for failure to pay loan, restrictions on provisions, 40-5331
funds, purposes for which used, 40-5335
authorized investments, 40-5336
funeral benefits, maximum amount, 40-5326
funeral homes, operation by societies prohibited, 40-5320

References are to Title and Section numbers

INSURANCE (Continued)
Fraternal benefit societies (Continued)
garnishment of benefits prohibited, 40-5327
impairment of reserves, assessments against members, 40-5322
incorporators, number required and qualifications, 40-5309
initial solicitations, 40-5312
injunction from doing business, 40-5356
exclusive power of attorney general and commissioner, 40-5357
institutions, maintenance by societies authorized, 40-5320
investment of funds, 40-5336
laws applicable, 40-5304, 40-5359
license to transact business, annual expiration and renewal, 40-5306
limitation of actions on certificate, minimum period, 40-5331
liquidation of society, action for, 40-5356
loans on certificates, authority and computation of value, 40-5325
"lodge system" defined, 40-5302
meetings of members, place of holding, 40-5319
membership, qualification for, 40-5321
merger of societies, 40-5353
effect of merger, 40-5354
minors, admission to membership, 40-5321
insurance authorized without membership, 40-5324
misrepresentation, penalties and forfeitures, 40-5350
nonforfeiture benefits, authority and computation, 40-5325
personal liability for benefits, officers and members exempt, 40-5328
pre-existing societies
incorporation of associations required, 40-5316
powers retained by incorporated society, 40-5315
preliminary certificate of authority
issuance of certificate, 40-5310
period during which valid, 40-5311
solicitation under preliminary certificate, 40-5312
"premiums" defined, 40-5332
principal office of society, location, 40-5319
rebates prohibited, 40-5351
receivership proceedings, 40-5356
records of proceedings to be in English language, 40-5319
reinsurance agreements, 40-5334
"representative form of government" defined, 40-5303
reserves required, computation, 40-5338
retroactive certificates, maximum period, 40-5331
review of actions of commissioner, 40-5358
service of process on society through commissioner, 40-5352
social members without voice in insurance affairs, 40-5321
tax exemption, 40-5343
time allowed for completing organization, 40-5311
types of benefits authorized to be provided by societies, 40-5323
valuation of certificates, computation and filing, 40-5338
voluntary discontinuation of business, procedure, 40-5356
waiver of constitution and laws, provision prohibiting, 40-5318
Gaming policies void, 40-3709
Guaranteed arrest bond certificates, 95-1121 to 95-1123
Hail insurance, 82-1501 to 82-1520—See HAIL INSURANCE, STATE
Health insurance for persons over 65
agents authorized to write insurance, 40-5404
association to provide insurance
corporate powers of association, 40-5405
definition, 40-5402
examination of books and records of association, 40-5405
filing by association with commissioner, 40-5407
name of association not to be deceptive, 40-5407
policy issued to association, 40-5403
reports by association to commissioner, 40-5406
service of process on association, 40-5405

INSURANCE (Continued)
Health insurance for persons over 65 (Continued)
cancellation prohibited except for nonpayment of premiums, 40-5403
definition of terms, 40-5402
disapproval of forms by commissioner, 40-5406
eligibility of all persons over 65 for coverage, 40-5403
exemption from provisions of other laws, 40-5408
Federal insurance program, adjustment of benefits and premiums to, 40-5406
forms of policies, applications and certificates to be approved by commissioner, 40-5406
joint underwriting and administration permitted, 40-5403
promotional material not to be deceptive, 40-5407
purpose of act, 40-5401
rate regulation by commissioner, 40-5406
reduction of benefits if other benefits recoverable, 40-5403
Health insurance for state employee groups, 40-3905.1
Health service corporations, exemption from insurance code, 40-2611
Holding Companies Act
definition of terms, 40-5502
examination of foreign and domestic companies, 40-5505
annual reports, submission, 40-5505
frequency of examination, 40-5505
filing false information, penalty, 40-5508
short title, 40-5501
transfers of stock, restrictions, 40-5503
exemptions from prohibitions, 40-5504
petition for approval by commissioner, submission, 40-5506
violations of act, penalty, 40-5507
Injunction of unfair and deceptive practices, 40-3515
Installment sales act, provisions concerning obtaining of insurance by buyer, 74-607
Insurable interest
personal insurance, 40-3704
property insurance, 40-3705
stipulations for payment of loss without regard to insurable interest void, 40-3709
Insurers
additional types of insurance, qualification of mutuals to write, 40-4713
affiliations unreliable, denial of authority to transact insurance, 40-2810
agreements not to sell property prohibited, 40-4727
alien insurers
definition of term, 40-2606
trust agreements for deposits of assets
amendment of agreement, 40-5207
authority of insurer to make agreement, 40-5206
Canadian insurers, officers in lieu of manager, 40-5215
continuation of existing trust under previous instruments, 40-5203
examination of assets by commissioner, 40-5212
filing and approval of agreement, 40-5205
form and contents of agreement, 40-5205
period during which deposit maintained, 40-5204
purpose of deposits, 40-5204
required deposits, amount, 40-5202
scope of chapter, 40-5201
separation and record of assets, 40-5210
statement of trustee as to character and amounts of asset, 40-5211
substitute trustee, 40-5214
title to trusteed assets, 40-5209
withdrawal of assets by insurer, 40-5213
withdrawal of commissioner's approval, 40-5208
amount of insurance required for formation of mutual, 40-4708
annual statement filed with commissioner, 40-2820
false statements, penalty, 40-2820
applications for mutual insurance to take effect on issuance of certificate of authority, 40-4710

INSURANCE (Continued)
Insurers (Continued)
articles of incorporation
amendment of articles, 40-4707
contents required, 40-4705
filing and approval, 40-4706
assets and liabilities
allowable assets in determining financial condition, 40-3001
bonds, valuation, 40-3013
deduction of assets from liabilities and liabilities from assets, 40-3002
domestic insurer's assets to be kept in state, 40-4725
excluded assets in determination of financial condition, 40-3003
liabilities considered in determining financial condition, 40-3004
purchase money mortgages, valuation, 40-3016
real estate valuation, 40-3015
reserves for unearned premiums, 40-3005 to 40-3012—See Reserve for unearned premiums, below
securities other than bonds, valuation, 40-3014
tangible personal property, valuation, 40-3015
"authorized" insurers defined, 40-2607
benevolent associations, 40-4901 to 40-4917—See Benevolent associations, above
bonding of officers of mutual insurer, 40-4722
bond or deposit required of mutual insurers, 40-4709
borrowed surplus, 40-4738
bulk reinsurance, 40-4747
mutual insurers, 40-4748
buying and selling of votes by proxy prohibited, 40-4719
bylaws
modification or revocation of bylaws of stock insurer, 40-4716
mutual insurers, adoption, contents and filing, 40-4715
capital funds required, 40-2807
mutual insurers, 40-4708
certificate of authority required, 40-2801
application for certificate, contents and filing, 40-2811
exceptions, 40-2802
existing certificates, expiration and renewal, 40-2612
expiration, renewal and reinstatement of certificate, 40-2813
fees payable to commissioner, 40-2726
issuance and ownership of certificate, 40-2812
refusal of certificate, 40-2812
revocation or suspension of certificate
discretionary grounds, 40-2815
duration of suspension, 40-2817
mandatory grounds, 40-2814
notice of revocation or suspension, 40-2816
reinstatement of suspended certificate, 40-2817
certificate of incorporation, issuance and effect, 40-4706
combinations of insuring powers, 40-2806
consolidation of insurers, 40-4745
mutual insurers, 40-4746
contingent liability of mutual members, 40-4729
assessment, levy by directors, 40-4730
enforcement of liability, 40-4731
nonassessable policies, issuance, 40-4732
revocation of authority for issuance, 40-4733
conversion of mutual to stock insurer, 40-4744
conversion of stock insurer to mutual, 40-4743
corporation statutes of state, application to insurers, 40-4704
corrupt practices with respect to meetings of stockholders or members, 40-4719
defamatory statements, 40-3507
deficits in capital or assets to be made good, 40-4739
assessment of stockholders or members, 40-4740
directors' liability for losses during deficit, 40-4741
transfer of stock during impairment does not release liability, 40-4742

INSURANCE (Continued)
Insurers (Continued)
definition of "insurer," 40-2603
deposits of initial premiums received by mutual insurer, 40-4711
deposits through commissioner—See Deposits through commissioner, above
directors, number, term and election, 40-4720
participation of policyholders in election, 40-4721
dividends, funds from which payable, 40-4735
mutual insurers, 40-4736
penalties for unlawful dividends, 40-4737
"domestic" insurer defined, 40-2606
eligibility for certificate of authority, 40-2804
examinations by commissioner, 40-2713
conduct of examination, 40-2715
destruction of books to hinder examination, penalty, 40-2716
expenses of examination, 40-2717
managers and promoters, 40-2714
reports on examinations, 40-2716
exclusive agency contracts subject to commissioner's approval, 40-4724
existing domestic insurers continue corporate existence, 40-2614
extinguishment of charters, 40-4750
failure of mutual to qualify for certificate, return of premiums, 40-4712
false financial statements, 40-3506
farm mutual insurers, 40-4801 to 40-4853—See Farm mutual insurers, above
foreign insurers
definition of "foreign" and "alien" insurers, 40-2606
investments permitted, 40-3134
retaliatory tax provisions, 40-2826
"state" defined, 40-2606
fraternal benefit societies, 40-5301 to 40-5359—See Fraternal benefit societies, above
funeral directors, prohibited relations with, 40-3521
governmentally owned insurers prohibited, 40-2804
home office of domestic insurer, 40-4725
impairment of capital or assets, deficiency to be made good, 40-4739
assessment of stockholders or members, 40-4740
directors' liability for losses during deficiency, 40-4741
transfer of stock during impairment does not release liability, 40-4742
incorporators, number required, 40-4705
insider trading in securities, monthly statement to be filed with commissioner of insurance, 40-4751
arbitrage transactions exempt from restrictions, 40-4755
brokers, when exempt from restrictions, 40-4754
closely-held securities exempt from restrictions, 40-4757
delivery of securities sold, when required, 40-4753
market specialists, when exempt from restrictions, 40-4754
profits from security transactions accruing to company, 40-4752
registered securities exempt from restrictions, 40-4757
rules and regulations of commissioner, 40-4758
securities subject to restrictions, 40-4756
short sales by insiders prohibited, 40-4753
interlocking ownership and management, when permitted, 40-3517
investment advice exempt from securities act, 15-2004
investments
abstract plant and equipment, acquisition by title insurer, 40-3132
amount of investment limited, date of determination of insurer's funds, 40-3102
authorization by directors or investment committee required, 40-3104
building and loan shares and savings account, 40-3123
Canadian governmentally guaranteed loans, 40-3107
Canadian government direct obligations, 40-3106
certificate of authority not required, 40-2803
chattel mortgages, 40-3127
collateral loans, 40-3122
controlling interest in corporation, acquisition prohibited, 40-3133

INSURANCE (Continued)
Insurers (Continued)
investments (Continued)
corporate securities
bonds and debentures, 40-3114
common stock, 40-3116
insurance stock, 40-3117
maximum amount invested, 40-3105
preferred or guaranteed stock, 40-3115
subsidiary stocks, 40-3118
date of determination of eligibility, 40-3102
director, officer or controlling stockholder of insurer, loans to prohibited, 40-3133
disposal of unauthorized investments, time allowed
failure to dispose of property, effect, 40-3131
personal property and securities, 40-3130
real estate, 40-3129
unlawfully acquired property, 40-3131
diversification of investments required, 40-3105
equipment trust certificates, 40-3119
maximum amount invested, 40-3105
federal agency obligations, 40-3112
federal direct obligations, 40-3106
federally guaranteed loans, 40-3107
foreign insurers, investments permitted, 40-3134
foreign investments, 40-3124
improvement district obligations, 40-3110
maximum amount invested, 40-3105
income-bearing quality required, 40-3103
international bank obligations, 40-3113
investment trust securities, 40-3120
maximum amount invested, 40-3105
irrigation district obligations, 40-3111
market value, purchase price restricted to, 40-3103
miscellaneous investments not otherwise prohibited, 40-3125
own capital stock, investment in or loans on prohibited, 40-3133
policy loans, 40-3121
previously held investments, eligibility, 40-3102
real estate, 40-3128
real estate mortgages, 40-3126
scope of chapter, 40-3101
state, county and municipal obligations, 40-3108
revenue bonds, 40-3109
underwriting prohibited, 40-3133
liquidation of assets and liabilities, certificate of authority not required, 40-2802
loans to officers, directors and employees prohibited, 40-4723
management contracts subject to commissioner's approval, 40-4724
management unreliable, denial of authority to transact insurance, 40-2810
maximum amount insured on one risk, 40-2909
meetings of stockholders or members, 40-4717
membership in mutual insurers, 40-4714
merger of insurers, 40-4745
mutual insurers, 40-4746
"mutual" insurer defined, 40-4703
names of insurers, prevention of confusing similarity, 40-2805
participating policies, authority for issuance, 40-4734
pecuniary interest of officers, directors and employees, restrictions, 40-4723
"person" defined, 40-2604
political contributions prohibited, penalty, 40-3518
principal place of business of domestic insurers, 40-4725
proxies of stockholders, revocability, 40-4718
reciprocal enforcement against domestic insurers of unauthorized insurer laws of other states, 40-4728
reciprocal insurance, 40-5001 to 40-5028—See Reciprocal insurers, below

INSURANCE (Continued)

Insurers (Continued)
records of domestic insurer to be kept in state, 40-4725
rehabilitation and liquidation
appeals to supreme court in delinquency proceedings, 40-5102
assessments against members or subscribers
judgment for assessment, 40-5133
levy of assessment, 40-5132
notice of assessment, 40-5133
order for payment of assessments, 40-5133
order of assessments, 40-5132
petition for assessment, 40-5131
presumption that assessment is correct, 40-5133
attachment of assets during proceedings prohibited, 40-5120
borrowing power of commissioner, 40-5124
claims against insurers
contents of claim, 40-5118
contingent and unliquidated claims, 40-5129
employees' claims, priority, 40-5127
filing of claim, 40-5118
hearing and order on claims filed, 40-5118
judgments, restrictions on effect as evidence, 40-5129
nonresident claims against domestic insurers, 40-5116
offset of debts and credits, 40-5128
preferred claims, 40-5119
priority of claims, 40-5119
report and notice of claims filed, 40-5118
resident claims against foreign insurer, 40-5117
secured claimant, maximum value allowed, 40-5129
time for filing, 40-5130
commencement of delinquency proceedings, 40-5103
definition of terms, 40-5101
deposit of moneys collected by commissioner, 40-5122
employees' claims, priority, 40-5127
exclusiveness of delinquency proceedings as method, 40-5102
execution against assets during proceedings prohibited, 40-5120
fees for filing and recording of papers, exemption of commissioner, 40-5123
garnishment of assets during proceedings prohibited, 40-5120
grounds for conservation of foreign insurer, 40-5107
alien insurers, 40-5108
grounds for liquidation, 40-5106
ancillary liquidation of foreign insurer, 40-5109
grounds for rehabilitation of domestic insurers, 40-5105
injunctions on application of commissioner, 40-5104
jurisdiction of delinquency proceedings, 40-5102
liens voidable, 40-5126
mutual insurer, distribution of assets on liquidation, 40-4749
order of conservation of foreign or alien insurer, 40-5113
order of liquidation, 40-5111
alien insurer, 40-5112
ancillary liquidation of foreign insurer, 40-5113
order of rehabilitation or termination of rehabilitation, 40-5110
receivership, appointment and proceedings by commissioner, 40-5113
alien insurers, 40-5114
foreign insurers, 40-5115
report of commissioner to court, 40-5131
time of determination of rights on liquidation, 40-5125
transfers voidable, 50-5126
uniform insurers liquidation act, sections comprising, interpretation and construction, 40-5121
venue of delinquency proceedings, 40-5102
scope of chapter on organization and corporate procedures, 40-4701
service of process through commissioner, 40-2818
proceedings after service, 40-2819

INSURANCE (Continued)
Insurers (Continued)
"stock" insurer defined, 40-4702
surplus requirements, 40-2808
time allowed for mutual insurer to qualify, 40-4712
unauthorized insurers
actions by unauthorized insurers prohibited, 40-3402
aiding unauthorized insurers prohibited, felony, 40-3401
definition of term, 40-2607
representation of unauthorized insurer prohibited, felony, 40-3401
service of process on insurers
attorney's fees, when allowed in judgment, 40-3408
citation of act, 40-3403
commissioner as agent, 40-3404
defense of action, 40-3407
exemptions from service of process provisions, 40-3406
judgment, when allowed, 40-3405
motion to quash or set aside service, 40-3407
procedure for service, 40-3405
uniformity of interpretation, 40-3403
unused corporate charters, extinguishment, 40-4750
vouchers for disbursement of funds, 40-4726
Joint owners, transfer of interest by one does not avoid insurance, 40-3708
Lender favoring agent or insurer, prohibition, 40-3516
Liability insurance
architects on public projects to carry insurance, 66-114
horse racing licensees required to carry insurance, 62-510
sovereign immunity defense to be waived, 40-4401, 40-4402
Life insurance
agents—See also Agents and solicitors, above
disability insurance, authority of agent to write, 40-3303
practices prohibited to unlicensed persons, 40-3303
beneficiaries of industrial policies, provisions as to change, 40-3815
benefits arising out of debt of another policyholder prohibited, 40-3833
cash surrender values, provisions as to table of values to be included, 40-3810
claims for benefits, payment, 40-3814
credit life insurance—See Credit life and disability insurance, above
deduction of unpaid premiums and loan from policy proceeds, 40-3830
definition, 40-2902
dividends payable to policyholder, provision as to, 40-3808
entire contract to be contained in policy, 40-3806
excess risk, placement by agent with insurer other than that as to which licensed, 40-3326
grace period required, 40-3804
group life insurance
application as part of policy, 40-3913
certificates for individual insured persons, 40-3917
conversion rights
death of insured pending conversion, 40-3920
notice as to conversion rights, 40-3921
termination of eligibility of individual, 40-3918
termination of policy or coverage, 40-3919
credit union groups, requirements, 40-3907
debtor groups, requirements, 40-3906
dependents' coverage, 40-3909
employee groups defined, 40-3902
"employee life insurance" defined, 40-3922
established group required, 40-3901
grace period for payment of premiums, 40-3911
incontestability provision required, 40-3912
labor union groups, requirements, 40-3903
maximum coverage for one person, 40-3908
misstatement of age, provision for adjustment of premiums or benefits, 40-3915
nonforfeiture provisions required, 40-3910

INSURANCE (Continued)
Life insurance (Continued)
group life insurance (Continued)
payment of benefits, provisions as to, 40-3916
proof of insurability, provisions as to requiring, 40-3914
public employee groups, requirements, 40-3905
required provisions in group contracts, 40-3910
state employee groups, provision for, 40-3905.1
trustee groups, requirements, 40-3904
violations of chapter, penalty, 40-3923
guaranteed installment payments, table of amounts to be included, 40-3811
incontestability provision required, 40-3805
contest as to validity or restriction or exclusion not precluded, 40-3817
"industrial life insurance" defined, 40-3802
nonforfeiture provisions, 40-3831
lapse or termination of other policy, benefits arising from prohibited, 40-3833
loan value of policy, provisions as to, 40-3809
table of values to be included, 40-3810
minors, power to contract for insurance, 40-3710
misstatement of age, provision as to adjustment of benefits, 40-3807
nonforfeiture benefits, 40-3831
old policies, 40-3832
table of values to be included, 40-3810
participating policies, provision as to dividends payable, 40-3808
premium payment provision to be included, 40-3813
prohibited provisions, 40-3826
industrial life insurance, 40-3827
reinstatement provisions to be included, 40-3812
contestability and exclusions after reinstatement same as for original policy, 40-3828
rejected risk, placement by agent with insurer other than that as to which licensed, 40-3326
reserve for unearned premiums, 40-3008
amount of reserve required, 40-3011
deposit of reserves, 40-3012
retention of policy proceeds by insurer under agreement, 40-3829
scope of chapter, 40-3801
single premium policies, inapplicable provisions omitted, 40-3803
standard provisions required, 40-3803
standard valuation law, 40-3011
term policies, inapplicable provisions omitted, 40-3803
title required on policies, 40-3816
types of insurance forbidden to life insurers, 40-2806
unclaimed funds when presumed abandoned, 67-2203—See PROPERTY, Unclaimed property
valuation of policies for determination of reserves, 40-3011
Marine insurance
definition, 40-2907
reserve for unearned premiums, 40-3006
Maximum amount insured on one risk by one insurer, 40-2909
Minors, gift of policy to, 67-1801 et seq.
Minors, power to contract for life and disability insurance, 40-3710
Misrepresentation of terms of policy or condition of insurer, 40-3503 to 40-3505
Monopolistic practices prohibited, 40-3508
Named insured, restriction of property insurance to interest of, 40-3706
Partnership, transfer of interest by partner does not avoid insurance, 40-3708
Payment discharges insurer, 40-3730
minor may give acquittance, 40-3731
Penalty for violations, 40-2617
Policies
additional provisions permitted to be included, 40-3719
annuity contracts—See Annuity contracts, above
assignment of policies, 40-3729
exclusion from chapter on secured transactions, 87A-9-104

INSURANCE (Continued)
Policies (Continued)
binders for temporary insurance, 40-3726
bylaws of insurer, incorporation by reference prohibited, 40-3720
charter of insurer, incorporation by reference prohibited, 40-3720
combination policies, issuance by two or more insurers, 40-3722
construction of entire policy, 40-3725
contents of policy in general, 40-3718
countersignature by agent required, 40-2822
commission of resident agent on policy originating outside state, 40-2824
issuance of policy at home or branch office, 40-2825
salaried personnel prohibited from countersigning, 40-2823
definition of term, 40-3702
delivery of policy, 40-3727
disability insurance—See Disability insurance, above
duplicate policy issued to holder of security interest, 40-3727
entire contract contained in policy, 40-3717
execution of policies, 40-3721
exemption from securities act, 15-2004, 15-2013
existing forms remaining in effect, 40-2613
extension by certificate, 40-3728
form, approval required, 40-3714
grounds for disapproval, 40-3715
identifying characters on policy forms, 40-3718
life insurance policies, 40-3803 to 40-3833—See Life insurance, above
loans on policies authorized, 40-3121
named insured, restriction of insurance to interest of, 40-3706
noncomplying provisions, construction as if in compliance, 40-3724
pledge of policies, 40-3729
renewal by certificates, 40-3728
scope of chapter, 40-3701
security interest in policies excluded from Uniform Commercial Code, 87A-9-104
signature of policies, 40-3721
standard provisions required, when omissions and substitutions permitted, 40-3716
underwriters' policies, joint issuance, 40-3722
valued policy law applicable to real estate improvements, 40-4302
Power of persons to contract for insurance, 40-3710
Preferred rate plans to be approved by commissioner, 40-3520
"Premium" defined, 40-3703
Premiums, collection when not due prohibited, 40-3519
Property insurance
definition, 40-2904
measure of indemnity, 40-4301
reserve for unearned premiums, 40-3005
valued policy law applicable to real estate improvements, 40-4302
Public grain warehousemen, insurance coverage required, 3-228
Rates and rating organizations
adherence to filings required, 40-3620
advisory organizations, 40-3625
appeals from commissioner, 40-3633
appeals to commissioner, 40-3632
assigned risk plan, 40-3630
bases for rate making, 40-3603
deviations from organization filings, 40-3621
disapproval of filings
hearing on disapproval after waiting period, 40-3609
manuals not to be disapproved if requirements met, 40-3610
notice of disapproval within waiting period, 40-3608
discriminatory rates prohibited, 40-3612
dividends and return of premiums to policyholders not regulated by chapter, 40-3628
effective date of filing of rates, 40-3607
examination of bureaus and organizations by commissioner, 40-3627
excess rates on specific risk, application for, 40-3611

INSURANCE (Continued)
Rates and rating organizations (Continued)
exemptions from chapter
suspension or modification of requirements by commissioner, 40-3606
types of insurance exempt, 40-3602
existing filings remaining in effect, 40-2613
false or misleading information, penalty, 40-3631
filing for insurer permitted, 40-3605
filing of rates required, 40-3604
groups of insurers using same rate, 40-3624
inadequate rates prohibited, 40-3612
inquiries by commissioner, duty to reply, 40-3622
inspection and survey of specially rated risk, 40-3628
interchange of rating plan data permitted, 40-3629
joint underwriting and joint reinsurance plans subject to regulation, 40-3626
liberal construction of chapter, 40-3601
organizations
changes in organization, notice to commissioner, 40-3617
definition and authorization, 40-3614
dividends and returns to policyholders not to be prohibited by organization, 40-3616
examination of policies of members, 40-3619
licenses, 40-3615
membership to be open to authorized insurers, 40-3616
subscriptions to be open to authorized insurers, 40-3616
technical services, providing to members and subscribers, 40-3618
purpose of chapter, 40-3601
review and correction of improper rate, 40-3613
standards for rate making, 40-3603
Rebates prohibited
life and disability insurance, 40-3510
exceptions, 40-3511
property, casualty and surety insurance, 40-3512
Reciprocal insurers
actions by and against insurers, 40-5005
advance of funds to insurer, limitations on retainment, 40-5015
annual statement of insurer, filing, 40-5014
assessments against subscribers
aggregate liability, maximum in one year, 40-5023
authority for levy, 40-5021
computation of amounts, 40-5021
time limit for levy of assessment, 40-5022
assets and liabilities considered in determining financial condition, 40-5016
attorney-in-fact
action on attorney's bond, 40-5013
bond of attorney, 40-5012
definition, 40-5006
foreign attorney not doing business by representing authorized insurer, 40-5006
powers of attorney, 40-5010
modifications of power, 40-5011
certificate of authority, issuance, suspension or revocation, 40-5009
conversion into stock or mutual insurer, 40-5027
declaration by attorney-in-fact, content and filing, 40-5008
definition, 40-5001, 40-5002
existing insurers, compliance with chapter required, 40-5003
foreign insurers, application of chapter to, 40-5003
impairment of surplus, deficiency to be made up, 40-5028
insuring powers of reciprocal, 40-5004
life insurance by reciprocal arrangement prohibited, 40-2806
liquidation, distribution of assets to subscribers, 40-5026
merger of insurers, 40-5027
modifications of subscribers' agreement or power of attorney, 40-5011
name of insurer, 40-5005
nonassessable policies, issuance, 40-5024

References are to Title and Section numbers

INSURANCE (Continued)
Reciprocal insurers (Continued)
organization of insurer, 40-5008
reinsurance authorized, 40-5004
savings, distribution to subscribers, 40-5025
subscribers
advisory committee representing subscribers, selection and powers, 40-5018
eligibility to become subscriber, 40-5017
fiduciaries of subscribers not personally liable, 40-5017
judgment against insurer required for direct liability, 40-5020
liability of subscribers, 40-5019
surplus funds required, 40-5007
Reinsurance authorized, 40-2910
certificate of authority not required, 40-2802
original insured has no interest, 40-3723
state hail insurance, 82-1505
Reserve for unearned premiums
casualty insurance, 40-3005
disability insurance, 40-3007
increase of inadequate reserves, 40-3009
liability insurance, 40-3008
life insurance, 40-3011
deposit of reserves, 40-3012
marine insurance, 40-3006
property insurance, 40-3005
surety insurance, 40-3005
title insurance, 40-3010
workmen's compensation insurance, 40-3008
Retaliatory tax provisions, 40-2826
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
Saving clause as to rights and liabilities accrued, 40-2615
Securities of insurance companies, insider trading in, 40-4751 to 40-4758—See Insurers insider trading in securities, above
Solicitation of business defined as transaction of insurance, 40-2608
Sovereign immunity defense waived by insurers, 40-4401, 40-4402
Special provisions in code prevail over general, 40-2616
State buildings, deposit and use of insurance proceeds for damage, 78-1101
Stock offer as inducement to insurance prohibited, 40-3513
Surety insurance
assigned risk plans, 40-3630
definition, 40-2906
official bonds, power of insurers to rights, 40-4502
powers of surety insurers generally, 40-4501
release of corporate insurers from liability, 40-4503
reserve for unearned premiums, 40-3005
Surplus line insurance
actions against insurer, 40-3423
affidavit as to prerequisites, 40-3411
agent, license, fee and bond, 40-3414
authority under license, 40-3415
revocation of license, 40-3422
annual statement of agent, contents and filing, 40-3419
certificate of authority not required, 40-2802
certificate or policy of insurance, issuance and contents, 40-3417
endorsement of contract, 40-3412
exemptions from surplus line law, 40-3426
liability of insurer as to losses and unearned premiums, 40-3418
prerequisites to issuance of surplus line insurance, 40-3410
records maintained by agent, 40-3419
rules and regulations prescribed by commissioner, 40-3425
service of process on insurer, 40-3424
short title of act, 40-3409
solvency of insurer, 40-3416

References are to Title and Section numbers

INSURANCE (Continued)
Surplus line insurance (Continued)
tax on premiums, 40-3420
penalty for failure to file or pay, 40-3421
validity and enforcement of surplus line insurance, 40-3413
Tax on premiums, 40-2821
fire insurance premiums, 82-1231
proceeds paid to relief associations, 11-1919
report of premiums from various cities, 11-1918
independently procured coverage, 40-3427
police department payments from proceeds of tax, 11-1834 to 11-1837—See CITIES AND TOWNS, Police department, state payments
retaliatory tax provisions, 40-2826
surplus line premiums, 40-3420
penalty for failure to file or pay, 40-3421
Title insurance
abstract or legal opinion required as basis for insurance, 40-4601
definition, 40-2908
guaranty fund required, 40-4603
investments in abstracting plant and equipment authorized, 40-4603
mutual title insurers prohibited, 40-2806
rates, filing with commissioner, 40-4602
reserve for unearned premium, 40-3010
Title of Code, 40-2601
Trade practices
false financial statements, penalty, 40-3506
purpose of regulation, 40-3501
"Transact" defined, 40-2608
Types of insurance enumerated, 40-2902 to 40-2908
Unfair competition prohibited, 40-3502
Uninsured motorist coverage added to motor vehicle policies, 40-4403
Unit ownership property, obtaining insurance for, 67-2331
Valued policy law applicable to real estate improvements, 40-4302
Vending machines, license required, 40-3322
Vendor of property favoring agent or insurer, prohibition, 40-3516
Vested rights preserved, 40-2615
Wagering policies void, 40-3709
Workmen's compensation insurance
reserve for unearned premiums, 40-3008
subject to workmen's compensation act, 92-1005

INTEREST
Consumer loan act—See CONSUMER LOAN ACT
Legal interest rate, 47-124
Usury laws unaffected by Secured Transactions chapter, 87A-9-201

INTERLOCAL CO-OPERATION
Interlocal agreements, terms and conditions, 16-4904
appropriation of funds, 16-4904
approval by attorney general, 16-4904
filing with county clerk and recorder and secretary of state, 16-4904
furnishing of services, 16-4904
"Public agency" defined, 16-4903
Purpose of act, 16-4901
Short title of act, 16-4902

INTERPLEADER
Bailee under document of title requiring interpleader of conflicting claims, 87A-7-603
Form suggested by rules, M. R. Civ. P., Appendix of Forms, Form 14
Joinder of parties by interpleader, M. R. Civ. P., Rule 22(a)
Substitution of parties by interpleader, M. R. Civ. P., Rule 22(b)

INTERVENTION
Constitutional questions, M. R. Civ. P., Rule 24(c)

References are to Title and Section numbers

INTERVENTION (Continued)
Permissive intervention, M. R. Civ. P., Rule 24(b)
Procedure, M. R. Civ. P., Rule 24(c)
Right to intervene, M. R. Civ. P., Rule 24(a)

INVESTMENT ADVISERS
See SECURITIES REGISTRATION, Investment advisers

INVESTMENT COMMISSIONER
See SECURITIES REGISTRATION, Investment commissioner

INVESTMENT COMPANIES
See SECURITIES REGISTRATION, 15-2001 to 15-2025

INVESTMENTS
Bonds issued for urban renewal projects, 11-3911
Special improvement district interest and sinking fund moneys, 11-2288

INVESTMENT SECURITIES
See also SECURITIES REGISTRATION, 15-2001 to 15-2025
Agreements as to applicable state law, restrictions on, 87A-1-105
Altered security enforceable according to original terms, 87A-8-206
Assessments, liability of registered owner for, 87A-8-207
Attachment of securities, method of levy, 87A-8-317, 93-4307
Authenticity of third-party documents presumed, 87A-1-202
Bank deposits and collections, extent to which subject to chapter, 87A-4-102
Blanks in security, authority to fill, 87A-8-206
Brokers
adverse claims to securities held by broker for customer, 87A-8-313
definition of "broker," 87A-8-303
fiduciary obligations, not liable for breach by principal, 87A-8-318
rights of customer in securities held by broker, 87A-8-313
warranties given by broker in transfer or registration of security, 87A-8-306
Burden of proof as to signatures and defenses in actions on security, 87A-8-105
Call for redemption or exchange, time lapse after call giving notice of defect or defense, 87A-8-203, 87A-8-305
Calls, liability of registered owner for, 87A-8-207
Citation of Uniform Commercial Code chapter, 87A-8-101
Clearing corporations, pledge or transfer of securities by entries on books, 87A-8-320
Commercial Paper chapter inapplicable to securities, 87A-3-103
Conditional delivery ineffective as defense against purchaser for value, 87A-8-202
Conflict of laws on validity of security and rights and duties of issuer, 87A-8-106
Counterfeit securities invalid, 87A-8-202
Course of dealing between parties, application, 87A-1-205
Creditors' remedies to reach security, 87A-8-317
Defective securities, validity in hands of purchaser for value, 87A-8-202
Definition of terms, 87A-8-102
"bona fide purchaser," 87A-8-302
"broker," 87A-8-303
general definitions in Uniform Commercial Code, 87A-1-201
"issuer," 87A-8-201
Endorsement of security
blank endorsement, definition, 87A-8-308
delivery required to complete transfer, 87A-8-309
delivery to purchaser without endorsement, effect, 87A-8-307
fiduciary endorsement, effect of want of authority, 87A-8-308
form of endorsement, 87A-8-308
guarantee of signature or endorsement, effect, 87A-8-312
notice to purchaser of adverse claims, form of endorsement constituting, 87A-8-304
bearer endorsement, 87A-8-310
partial transfer, endorsement making, 87A-8-308
persons with power to endorse, 87A-8-308
special endorsement, definition, 87A-8-308
unauthorized endorsement, when ineffective against owner, 87A-8-311

INVESTMENT SECURITIES (Continued)

Fiduciary transfers
- adverse claims, duties of corporation or agent after notice, 15-656
- agent or bailee not liable for breach by principal, 87A-8-318
- assignment by fiduciary, corporation or agent not bound to inquire, 15-654
- authorized transfers, nonliability of corporation and agent, 15-657
- breach of duty by fiduciary, nonliability of innocent parties, 15-658
- citation of act, 15-662
- conflict of laws, 15-659
- definition of terms, 15-652
- evidence required for assignment by fiduciary not registered owner, 15-655
- guarantor of signature, restriction on liability, 15-658
- registration in name of fiduciary, corporation or agent not bound to inquire, 15-653
- short title of act, 15-662
- tax obligation unaffected by act, 15-660
- territorial application of act, 15-659
- uniformity of interpretation, 15-661

Forgery as defense against purchaser for value, 87A-8-202
Fractional interest in rights or property, creator as "issuer," 87A-8-201
Good faith required, 87A-1-203
Guarantor of security, obligation as "issuer," 87A-8-201
Incomplete security, authority to fill, 87A-8-206
Incorporation by reference to other documents and laws, 87A-8-202
Injunction to reach security, 87A-8-317
Judicial process to reach security, 87A-8-317
Levy on security, procedure required, 87A-8-317
Lien of issuer to be noted on security, 87A-8-103
Negotiable nature of securities, 87A-8-105
Nondelivery ineffective as defense against purchaser for value, 87A-8-202
Notice by issuer to registered owner sufficient, 87A-8-207
Notice to purchaser of adverse claims, conditions constituting, 87A-8-304
- staleness as notice, 87A-8-305

Overissue of security, effect on provisions validating or compelling issuance of security, 87A-8-104

Pleadings as to signatures and defenses in action on security, 87A-8-105
Pledge of securities by entries on books of clearing corporation, 87A-8-320
Possessory action against security after wrongful transfer, 87A-8-315
References to other documents and laws, effect, 87A-8-202

Registration of security
- action by adverse claimant to prevent registration, 87A-8-403
- agent for registration, rights and duties, 87A-8-406
- assessments, liability of registered owner for, 87A-8-207
- assurances required by issuer before registering transfer, 87A-8-402
- authenticating trustees, rights and duties, 87A-8-406
- bearer endorsement, right of holder to registration under, 87A-8-310
- calls, liability of registered owner for, 87A-8-207
- delay in registration, liability of issuer for loss resulting from, 87A-8-401
- destroyed security, obligations of parties, 87A-8-405
- duty of issuer to register transfer, 87A-8-401
- exemption of issuer from liability for loss from registration, 87A-8-404
- fiduciary obligations, duty of issuer to inquire into, 87A-8-403
- inquiry into adverse claims, duty of issuer before registration, 87A-8-403
- liability of issuer for loss from registration of transfer, 87A-8-404
- lost securities, obligations of parties, 87A-8-405
- notice to registered owner by issuer sufficient, 87A-8-207
- proof of authority to transfer furnished to purchaser, 87A-8-316
- requirements of issuer for registration of transfer, 87A-8-402
- stolen securities, obligations of parties, 87A-8-405
- transfer agent, rights and duties, 87A-8-406
- transfer books, maintenance creating status of "issuer," 87A-8-201
- unauthorized endorsement, when ineffective against owner, 87A-8-311
- voting rights of registered owner, 87A-8-207
- warranties of person presenting security for registration, 87A-8-306

Reservation of rights by party while performing or accepting performance, 87A-1-207

References are to Title and Section numbers

INVESTMENT SECURITIES (Continued)
Sale of securities
"bona fide purchaser" defined, 87A-8-302
delivery to purchaser, acts constituting, 87A-8-313
exchange or brokers, sale through, 87A-8-314
form of security acceptable, 87A-8-107
delivery without endorsement, effect, 87A-8-307
notice to purchaser of adverse claims, conditions constituting, 87A-8-304
staleness as notice, 87A-8-305
price, recovery by seller when buyer fails to pay, 87A-8-107
proof of authority to transfer furnished to purchaser, 87A-8-316
rights acquired by purchaser, 87A-8-301
warranties of registrar or transfer agent to purchaser, 87A-8-208
warranties of transferor to purchaser, 87A-8-306
Short title of Uniform Commercial Code chapter, 87A-8-101
Staleness of called or matured security as notice of defect or defense, 87A-8-203
Statute of frauds, 87A-8-319
Street name account, right of owner to securities in, 87A-8-313
Successor issuer, responsibility, 87A-8-201
Time allowed for required actions, 87A-1-204
Transfer of security
clearing corporation entries as means of transfer, 87A-8-320
delivery required for transfer, 87A-8-309
delivery without endorsement, effect, 87A-8-307
form of security acceptable from person obligated to deliver, 87A-8-107
guarantee of signature or endorsement, warranties included, 87A-8-312
notice to purchaser of adverse claims, conditions constituting, 87A-8-304
staleness as notice, 87A-8-305
possessory action after wrongful transfer of security, 87A-8-315
proof of authority to transfer furnished to purchaser, 87A-8-316
registration of transfer, 87A-8-401 to 87A-8-406—See Registration of security, above
restrictions on transfer to be noted on security, 87A-8-204
warranties of registrar or transfer agent to purchaser, 87A-8-208
Unauthorized signature in course of issue, when effective, 87A-8-205
Usage of trade, application, 87A-1-205
Validity of defective security in hands of purchaser for value, 87A-8-202
Voting rights of registered owner, 87A-8-207
Warranties of registrar or transfer agent to purchaser, 87A-8-208
"When issued" contract, cancellation by purchaser on material change in security, 87A-8-202

IONIZING RADIATION
See RADIATION CONTROL, 69-5801 to 69-5816

IRRIGATION DISTRICTS
Bonds, signatures on, 89-1705
Commissioners
compensation of officers and employees of board, 89-1206
organization of appointed commissioners, 89-1206
place of office of commissioners, 89-1206
Examination of by state examiner, fee, 5-907
Joint operation
apportionment of costs and expenses, 89-1216
authority for, 89-1209
board of control
bond of member, 89-1210
employment of manager, 89-1214
establishment of office, 89-1213
examination by state examiner, 89-1215
member at large, 89-1210
members, 89-1210
per diem and expenses, 89-1212
powers and duties, enumeration, 89-1211

References are to Title and Section numbers

IRRIGATION DISTRICTS (Continued)
Joint operation (Continued)
board of control (Continued)
records required to be kept, 89-1215
vacancies occurring in, 89-1210
custodian of funds for, 89-1217
election on question, method of holding, 89-1218
existing contracts for joint operation, 89-1218
manager
bond, 89-1210
employment, 89-1214
office, 89-1213
payments from funds, 89-1217
purpose of act, 89-1220
records and papers of, 89-1213
withdrawal from contract for joint operation, 89-1219
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
Special examination by state examiner, fee, 5-910
Taxation
annual levy, 89-1804
apportionment by board of commissioners, 89-1803
cancellation of levy to pay indebtedness when bond issued, 89-1804
divided ownership, apportionment of taxes, 89-1804
elevation considered in apportioning assessment, 89-1803
maximum levy per acre, 89-1804
minimum charge, 89-1803
transmission of funds from county to county, 89-1814
uniformity of assessment rate against irrigable lands, 89-1803

J

JAILS
Diseased prisoners, removal to hospital, 69-4516
Medical expense for prisoners, reimbursement, 16-2818
Venereal disease, examination and treatment of prisoners for, 69-4606
Work release program for prisoners, 95-2216

JOINT TENANCY
Direct conveyance of real estate creating joint tenancy, 67-1602.1

JUDGES
Arrest, judges privileged from arrest, 95-616
Disqualification of judges
civil cases, 93-901
criminal cases, 95-1709
Retirement system
actuarial investigations and valuations, 93-1112
administrative expenses, appropriation, budgets, 93-1110
beneficiary, nomination of, 93-1127
board for administration of system, creation and composition, 93-1109
call of retired judge for duty, reimbursement, 93-1130
contributions to system
back payments, payroll deduction, 93-1113
members, contributions by, 93-1115
payment into retirement fund, 93-1111
state contributions, 93-1116
death benefits, 93-1123, 93-1124
definition of terms, 93-1107
disability retirement allowance, 93-1119
dormant accounts, transfer to pension accumulation fund, 93-1132
errors, correction, 93-1129
establishment of system, 93-1108

JUDGES (Continued)
Retirement system (Continued)
exemption of benefits from taxation or process, 93-1126
false or fraudulent statements, penalty, 93-1129
funds
payments into judges' retirement fund, investment, 93-1111
transfer of dormant accounts to pension accumulation fund, 93-1132
involuntary retirement allowance, 93-1120
membership in system, 93-1113
military service, credit for, 93-1128
monthly payment of allowances, 93-1125
optional means of payment of benefits, 93-1131
penalty retirement allowance, 93-1121
refund of contributions on resignation or discharge, 93-1122
rules and regulations for administration of system, 93-1112
service allowance, computation of, certificate issued, 93-1114
service retirement allowance, amount, 93-1118
voluntary retirement, requirements for vesting of proportional retirement allowance, 93-1117
Salary increase during term permitted, Art. VIII, § 29

JUDGMENTS
Amendment to conform to new findings of fact, M. R. Civ. P., Rule 52(b)
Amount of judgment, M. R. Civ. P., Rule 54(c)
Assignment excluded from Uniform Commercial Code, 87A-9-104
Contents of judgment, M. R. Civ. P., Rule 54(a)
Costs included in judgment, M. R. Civ. P., Rule 54(d)
Counterclaim, separate judgment on, M. R. Civ. P., Rule 13(i)
Criminal procedure, 95-2201 to 95-2312—See CRIMINAL PROCEDURE, Sentence and judgment
Cross-claim, separate judgment on, M. R. Civ. P., Rule 13(i)
Declaratory judgment, action for, M. R. Civ. P., Rule 57
Default judgment
amount not to exceed that demanded, M. R. Civ. P., Rule 54(c)
entry of judgment, M. R. Civ. P., Rule 55(a)
extension of time by court or stipulation, M. R. Civ. P., Rule 55(c)
real estate broker residing outside state, entry against, 66-1936
setting aside default, M. R. Civ. P., Rule 55(c)
Definition, M. R. Civ. P., Rule 54(a)
Enforcement proceedings governed by statutes, M. R. Civ. P., Rule 69
Entry of judgment on verdict, M. R. Civ. P., Rule 58
notice of entry served on adverse party, M. R. Civ. P., Rule 77(d)
Findings of fact by court, separate statement, M. R. Civ. P., Rule 52(a)
Harmless error, effect on judgment, M. R. Civ. P., Rule 61
Mistaken judgment, grounds and procedure for relief from, M. R. Civ. P., Rule 60
Multiple claims or parties, judgment as to portion, M. R. Civ. P., Rules 4 D(10), 54(b)
Offer of judgment before trial, M. R. Civ. P., Rule 68
Part of defendants served, application of judgment to defendant later served, M. R. Civ. P., Rule 4 D(10)
Pleading of judgments, manner, M. R. Civ. P., Rule 9(e)
Pleadings, motion for judgment on, M. R. Civ. P., Rule 12(c)
Sales after judgment validated despite defects, 93-5846
Specific acts required by judgment, M. R. Civ. P., Rule 70
Stay of proceedings to enforce judgment, M. R. Civ. P., Rule 62
Summary judgments, motion for, M. R. Civ. P., Rule 56
Third-party practice, separation of judgment, M. R. Civ. P., Rule 14(a)
Tort action against state, judgment in, 83-705
Validation of recorded judgment despite defects in proceedings, 93-5710.1, 93-5710.2
Vesting of title by judgment, M. R. Civ. P., Rule 70

JUNKYARDS
Regulation of junk yards along roads, 32-4513 to 32-4523—See HIGHWAYS, BRIDGES AND FERRIES, Junkyards along roads

References are to Title and Section numbers

JURIES AND JURORS

Advisory jury trial, M. R. Civ. P., Rule 39(c)
Alternate jurors, seating, M. R. Civ. P., Rule 47(c)
Challenges for cause, trial by court, M. R. Civ. P., Rule 47(a)
Coroner's inquest, number of jurors, jurors to be sworn, 95-803, 95-804
Court ordering jury trial, M. R. Civ. P., Rule 39(b)
Criminal cases, 95-1901 et seq.—See CRIMINAL PROCEDURE, Juries and jurors
Demand for jury trial, M. R. Civ. P., Rule 38(b)
Examination of prospective jurors, M. R. Civ. P., Rule 47(a),(b)
Fees payable to jurors, 25-401
Grand jury, 95-1401 to 95-1410—See GRAND JURY
Instructions to jury, objections and exceptions, M. R. Civ. P., Rule 51
Interrogatories to jury, M. R. Civ. P., Rule 49(b)
Issues, designation for jury trial, M. R. Civ. P., Rule 38(c)
Jury lists
  officers required to make, 93-1401
  time for making, 93-1401
Mileage allowances to jurors for use of own vehicles, 59-801
  liability for approval of excess amount, 59-802
Reduced juries by stipulation of parties, M. R. Civ. P., Rule 48
Right to jury trial in civil cases, M. R. Civ. P., Rule 38(a)
  declaratory judgment actions, M. R. Civ. P., Rule 57
Right to jury trial in criminal cases
  district court, 95-1901
  justices' and police courts, 95-2004
Selection and examination of jurors, M. R. Civ. P., Rule 47(b)
Summoning of jurors, 93-1509
Verdict—See VERDICTS
  criminal cases, 95-1915—See CRIMINAL PROCEDURE, Verdicts
Waiver of right to jury trial, M. R. Civ. P., Rule 38(d)

JURISDICTION

Coroner, jurisdiction of, 95-812
Courts, jurisdiction of persons, M. R. Civ. P., Rule 4 B
Criminal cases, jurisdiction of courts and state criminal jurisdiction, 95-301 to 95-304

JUSTICES' AND POLICE COURTS (CIVIL MATTERS)

Pleadings—See PLEADINGS (CIVIL) in Parent Volume

JUSTICES OF THE PEACE

Criminal cases, proceedings, 95-2001 to 95-2009—See CRIMINAL PROCEDURE, Justices' courts
Criminal jurisdiction, 95-302
Depositions, 93-7712
Disqualification
  civil cases, 93-901
  criminal cases, 95-1709
Fees collected by justices
  civil actions, 25-301
  criminal actions, 25-303
Hours offices open for business, 25-306
Pleadings
  demurrers and pleas abolished, 93-6802.2
  enumeration of permissible pleadings, 93-6802.1
Practice of law by justice, restrictions on, 16-3605, 93-902
Quarters, selection by county commissioners, 25-306
Salaries, 25-306

JUVENILE COURT

Commitment of child to institution, reception and evaluation center, authority to commit to, 10-611.1
Delinquent children—See CHILDREN AND MINORS, Delinquent children
Hearings, exclusion of public, 10-611
Interstate compact on juveniles, 10-1001 to 10-1006—See CHILDREN AND MINORS, Interstate compact on juveniles

References are to Title and Section numbers

JUVENILE COURT (Continued)
Probation officers and deputies, appointment and salaries, 10-622
Publicity forbidden, 10-633
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A

K

KIDNAPING
Prisoner holding hostage, 94-2604
Venue of prosecution, 95-411

L

LABELS
Paints and paint products, 3-1510 to 3-1515—See PAINTS AND PAINT PRODUCTS

LABOR
Apprenticeship council, 41-1201, 41-1202—See APPRENTICESHIP COUNCIL
Commissioner of labor and industry, term of office, salary, and oath, 41-1603
Labor activity interfering with operation of sole proprietor or two man partnership retail or amusement establishment
  beer and liquor establishments excepted from act, 41-1804
  "immediate family" defined, 41-1803
  intent of act, 41-1801
  unfair labor practice, 41-1802
  violation of act, penalty, 41-1805
Restaurant, bar and tavern wage protection, 41-2001 to 41-2011—See WAGES, Restaurant, Bar and Tavern Wage Protection Act
Safety study commission
  appointment of members, 41-2102
  composition of commission, 41-2103
  employment of secretary and research services, 41-2106
  proposed changes in labor safety laws
    adoption by legislature required, 41-2105
    distribution to industry and legislature, 41-2104
  purpose of act, 41-2101
  records, commission required to keep, 41-2108
  reimbursement of commission members, 41-2107
  rules of procedure, adoption by commission, 41-2108
  scope of work, 41-2102
Vocational rehabilitation
  division, 41-801 to 41-805
  workmen's compensation recipients, 92-1401 to 92-1406—See WORKMEN'S COMPENSATION, Rehabilitation of injured workmen
Wages—See WAGES
Winter work programs, 41-1901 to 41-1907—See WINTER WORK PROGRAMS

LABORATORY COMMISSION
Commission abolished, 82-3322

LACHES
Affirmative defense, M. R. Civ. P., Rule 8(c)

LANDLORD AND TENANT
Principal and income act, 67-1901 to 67-1916—See PRINCIPAL AND INCOME ACT

LARCENY
Possession of stolen livestock as evidence of larceny, 94-2704.1
Venue of prosecutions, 95-408

LAW ENFORCEMENT ACADEMY
See COLLEGES AND UNIVERSITIES, Law enforcement academy, 75-5201 to 75-5208

References are to Title and Section numbers

LAW ENFORCEMENT TELETYPEWRITER COMMUNICATIONS

Assessments for operational charges, 82-3903
Committee, members, terms, vacancies, meetings, compensation, duties, 82-3902
Establishment of system by attorney general, 82-3901
Federal agencies, co-operation with, 82-3905
Local law enforcement agencies, participation in system, 82-3904
Powers of attorney general, 82-3903
Report of attorney general, 82-3906
State agencies included, 82-3901

LEGISLATIVE AUDIT ACT

Audit charge against earmarked money, 79-2313
Audit committee
- appointment and terms of members, 79-2303
- expenses for attending meetings, 79-2304
- meetings, 79-2304
- officers, 79-2303

Citation of act, 79-2301
Definition of terms, 79-2302
Employees, appointment by auditor, 79-2306
Examinations of agencies, information required, 79-2312
Legislative auditor
- appointment and qualifications, 79-2305
- assistance to legislative assembly during sessions, 79-2311
- duties, 79-2308
- removal, notice and hearing, 79-2307
- term of office, 79-2307

Purpose of act, 79-2301
Recommendations of auditor, enforcement powers limited, 79-2310
Standards and objectives of audits of state agencies, 79-2309

LEGISLATIVE COUNCIL

Commission on interstate cooperation
- council constitutes, 82-2112
- council of state governments declared joint governmental agency, 82-2113
- delegations and committees, 82-2112
- function, 82-2112

LEGISLATIVE PROCEEDINGS—DISSEMINATION

Fee for complete set of legislative proceedings, 43-902
Funds, accounting and use of, 43-902
Index to session laws, assistance in preparation, 44-412
"One complete set" defined, 43-901
"Person" defined, 43-901
Press, radio and television, excepted from act, 43-903
"Proceedings of the legislature" defined, 43-901
Public officials, exemption from act, 43-904
Single copies of matters, fee, 43-902
Status sheets, single copies, fee, 43-902

LEGISLATURE

Apportionment, VI, 2 and 3
- representative apportionment, 43-106.2
- senatorial apportionment, 43-106.1

Arrest, members privileged from arrest, 95-616
Audit committee, appointment of members, 79-2303—See LEGISLATIVE AUDIT ACT
Compensation of members, 43-310
Emergency session of state senate for purpose of election of president pro tempore to assume governorship in event of enemy attack, 82-1309
Expense allowances for members, 43-310
Fiscal notes in legislative bills
- background information to be made available to legislators, 43-1006
- bills requiring note, 43-1001

References are to Title and Section numbers

LEGISLATURE (Continued)
Fiscal notes in legislative bills (Continued)
budget director and affected agencies to prepare note, 43-1002
comment on merits of bill prohibited, 43-1004
committee reports to include note, 43-1001
committee request for note, 43-1005
contents of notes, 43-1004
house request for note on second reading, 43-1005
presiding officer to determine need for note on introduction of bill, 43-1001
reference of completed note to committee, 43-1003
reproduction and distribution of note, 43-1003
time allowed for preparation of note, 43-1002
Lobbying—See LOBBYING
Mileage allowances to members for travel in own vehicles, 59-801
liability for approval of excessive amounts, 59-802
Per diem of members, 43-310
Post-enemy-attack, continuity in government, V, 46; 82-3801 to 82-3809—See WAR, Continuity in government
Publication of proceedings
definitions, 43-901
fees for copies, 43-902
free copies, who receives, 43-903
public officials exempt, 43-904
Vacancies in, how filled
county commissioners, appointment by, 43-215
alternate method on failure to receive majority vote, 43-216
"vacancy" defined, 43-217

LETTERS OF CREDIT
Advice of credit by another bank, obligations assumed by advising bank, 87A-5-107
Anticipatory repudiation by issuer, rights of beneficiary after, 87A-5-115
Assignment of right to draw under letter, effect, 87A-5-116
Authenticity of third-party documents presumed, 87A-1-202
Banks' power to issue letters, 5-1001
Cancellation of credit, liability of issuer, 87A-5-115
Citation of Uniform Commercial Code chapter, 87A-5-101
Confirmation of credit by another bank, obligation assumed by confirming bank, 87A-5-107
Consideration not required to establish credit, 87A-5-105
Contract underlying credit, issuer not responsible for performance, 87A-5-109
Course of dealing between parties, 87A-1-205
Definition of terms, 87A-5-103
general definitions in Uniform Commercial Code, 87A-1-201
index of definitions, 87A-5-103
Dishonor of draft or demand for payment
time allowed for, 87A-5-112
wrongful dishonor, liability of issuer, 87A-5-115
Documentary draft credit, application of chapter to, 87A-5-102
Documents related to credit
adequacy of document governed by chapter on letters of credit, 87A-7-509
examination of documents by issuer, 87A-5-109
insolvency of issuer or bank, rights of parties, 87A-5-117
noncomplying document in fact, payment by issuer of letter on, 87A-5-114
relinquishment by person presenting demand for payment, 87A-5-110
wrongful dishonor of draft or demand for payment, rights of person entitled to honor after, 87A-5-115
Erroneous advice of credit, liability of original issuer, 87A-5-107
Formal requirements for credit, 87A-5-104
Good faith required, 87A-1-203, 87A-5-109
Honor of draft or demand for payment, duty and privilege of issuer, 87A-5-114
Indemnity agreement to obtain honor, negotiation or reimbursement, 87A-5-113
Insolvency of issuer or advising or confirming bank, effect, 87A-5-117
Issuer's obligation to his customer, 87A-5-109
Modification of credit, when permitted and effect, 87A-5-106

LETTERS OF CREDIT (Continued)
Notation credit, obligation of party paying on, 87A-5-108
Order of payment of competing drafts or demands, 87A-5-108
Partial use of credit authorized, 87A-5-110
Phrasing of credit, no particular form required, 87A-5-104
Reimbursement of issuer after payment of draft or demand, 87A-5-114
Repudiation of credit by issuer, liability, 87A-5-115
Reservation of rights by party while performing or accepting performance, 87A-1-207
Revocation of credit, when permitted and effect, 87A-5-106
Sales contract requiring furnishing of letter of credit, 87A-2-325
Scope of Uniform Commercial Code chapter, 87A-5-102
Security interest in letter perfected by possession of secured party, 87A-9-305
Short title of Uniform Commercial Code chapter, 87A-5-101
Telegraphic letter, sufficiency, 87A-5-104
Time allowed for honor or rejection of draft or demand for payment, 87A-1-204, 87A-5-112
Time of establishment of credit, 87A-5-106
Transfer of right to draw under credit, 87A-5-116
Transmission and translation risk borne by customer, 87A-5-107
Usage of trade, application, 87A-1-205, 87A-5-109
Warranties on transfer or presentment of draft or demand for payment, 87A-5-111

LIBEL
Notice to publisher or broadcaster and opportunity to correct, 64-207.1

LIBRARIES
Free public libraries
board of trustees, appointment, 44-221
compensation, 44-221
composition of board, 44-221
powers and duties, 44-222
term of office, 44-221
vacancies, 44-221
chief librarian, appointment by board, 44-223
"city" defined, 44-227
continued existence of all public libraries, 44-228
establishment of library by resolution or petition, 44-219
exemption from county tax of city or town with own library, 44-226
financing public library by city or county tax levy or bonds, 44-220
merging of boards, institutions and agencies in providing library services, 44-225
personnel, appointment and compensation, 44-223
purpose of act, 44-218
use of library, 44-224
Historical and miscellaneous library
antique automobile collection, disposition of admission fees, 44-529
independent of other libraries, 44-518
Interstate library compact
administrator, executive officer of state library commission, 44-602
text of compact, 44-601
Joint county or regional library, participation of other governmental units, 44-213
State law library
accounts, approval by board of trustees, 44-410
session laws index, assistance in preparation, 44-412
State library commission created, composition and terms of office, 44-127
powers of commission, 44-131
State publications distribution center
creation of center, 44-133
definition of terms, 44-132
depository contracts, eligibility and standards, 44-135
exempt state agencies and officers, 44-139
general public distribution prohibited, 44-138
inter-library loan of state agency publications, 44-134
lists of available publications, distribution by center, 44-136
regulations, made by state library commission, 44-133

LIBRARIES (Continued)
State publications distribution center (Continued)
sale of state agency publications, 44-134
state agency lists of current publications furnished to center, 44-137
state agency publications deposited with library, 44-134

LICENSES
Affirmative defense, M. R. Civ. P., Rule 8(c)
County licenses, disposition of proceeds, 84-2708
Dog licensing, 16-4601 to 16-4615—See DOGS
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 8(a), Table A

LIENS
After-acquired property, lien on, 45-109
Agisters' lien
possession of property, right of lien holder to take, 45-1107
priority, 45-1106
Artisan's lien
possession of property, right of lien holder to take, 45-1107
priority, 45-1106
Bulk Transfer chapter inapplicable to lien foreclosure, 87A-6-103
Compensation for expense, lien holder not entitled to, 45-116
Criminal offenses, judgment to pay fine constitutes lien, 95-2208
Definition of term, 19-103
Factor's lien, 87A-9-101 to 87A-9-507—See SECURED TRANSACTIONS
Farm laborers' lien, duty to acknowledge and discharge on satisfaction, 45-911
Federal tax lien, 45-1501 to 45-1507—See TAXATION, Federal tax lien
Forfeiture of property subject to lien, contracts for void, 45-112
Future property, lien on authorized, 45-109
Hail insurance liens, duty to acknowledge and discharge on satisfaction, 45-707
Income tax lien, release or discharge of property from, 84-4958
Mechanic's lien excluded from Uniform Commercial Code chapter, 87A-9-104
Redemption from lien
restraining contracts void, 45-112
time when property may be redeemed, 45-301
Restoration of property to owner extinguishing lien, exceptions, 45-308
Seed liens
filing and retention of records, 16-2922
destruction of records, when allowed, 16-2923
satisfaction of lien, duty to acknowledge, 45-704
Spraying lien on crops, acknowledgment of satisfaction and discharge, 45-1410
Threshermen's lien
filing and retention of records, 16-2922
destruction of records, when allowed, 16-2923
satisfaction of lien, duty to acknowledge and discharge, 45-809
Unit ownership property, attachment and release of liens against, 67-2324
blanket liens released on conveyance of unit, 67-2323
common expenses, lien against individual units for, 67-2326
foreclosure of lien, 67-2327
purchaser at foreclosure not liable for expenses, 67-2329
rent paid by unit owner after foreclosure, 67-2328
transfer of liens on removal of property from act, 67-2335
consent of lien holders required for removal, 67-2332

LIMITATION OF ACTIONS
Affirmative defense in civil proceedings, M. R. Civ. P., Rule 8(c)
Annulment of marriage, action for, 48-203
Bulk transfers, actions to invalidate, 87A-6-111
Commercial paper, time of accrual of action, 87A-3-122
Probate contest, 91-1107
Sale of goods contract, actions arising out of, 87A-2-725
Subdivided lands, accrual of cause of action arising from sale or lease outside state, 67-2115

References are to Title and Section numbers

LIMITATION OF ACTIONS (Continued)
Support obligations of father of illegitimate child, 93-2901-3
Tax overpayment, time for filing claim for refund, 84-726
Trust indenture foreclosure proceedings, 52-407

LIQUEFIED PETROLEUM PRODUCTS
See PETROLEUM PRODUCTS, 60-223 to 60-233

LIVESTOCK
Commission
expenses, audit and payment, 46-105
inspectors and detectives, control and payment, 46-704
Dead animals, unlawful disposition, penalty for violations, 69-4518, 69-4519
Estrays
definition of "estray," 46-1005
proceeds of sale, disposition, 46-1006
publication of description of estrays sold, 46-1006
Hides
buyers and dealers
acting without license, penalty, 46-1107.1
fees for licenses, disposition, 46-1107
revocation of license for violations of act, 46-1107.1
certificate from buyer of hide required, 46-1101.2
falsification of certificate, penalty, 46-1102
definition of terms, 46-1101.1
identification tag to be affixed, 46-1101.2
penalty for failure to affix tag, 46-1102
unknown ownership, seizure and sale of hides, 46-1114
Inspection before removal from county
fees for inspection and permit, 46-804
penalties for violation of act, 46-806
seizure, retention, and sale of suspect animals, 46-803
sheep removal permits
fee for issuance of permit, 46-811
form of permit, 46-811
misdemeanor to remove sheep without permit after order, 46-810
petition of sheep raisers requesting permit order, 46-809
publication of notice, 46-812
removal of permit requirement, 46-813
Inspection before removal from state, violation, 46-808
penalty for removal without required inspection, 46-808
Markets
license fee, deposit and use, 46-911
sales of stray stock, disposition of proceeds, 46-904
Marks and brands, fees for recording, 46-609
Obliterated marks and brands, compensation for animals killed, 46-707
Protective districts
intercounty districts
declarations by county commissioners to form district, 46-2801
discontinuance of district, 46-2805
formation of districts authorized, 46-2801
petitions for formation of district, 46-2801
protective committee
powers and duties of committee, 46-2803
selection of members, 46-2802
removal of area from district, 46-2805
tax levy for special deputy fund, 46-2804
one-county districts
declaration by county commissioners to form district, 46-2806
discontinuance of district, 46-2810
formation of districts authorized, 46-2806
petition for formation of district, 46-2806

References are to Title and Section numbers

LIVESTOCK (Continued)
Protective districts (Continued)
one-county districts (Continued)
protective committee
powers and duties of committee, 46-2808
selection of members, 46-2807
tax levy for special deputy fund, 46-2809
Range livestock, method of taking possession by mortgagee or assignee, 93-4344
filing of papers by county clerk, 93-4346
Road construction areas, running at large prohibited, 32-319
impounding of animals at large, 32-320
penalty for violation, 32-321
Secured transactions, application of loan law to, 87A-9-203
Security agreements concerning livestock, filing with recorder of marks and brands, 52-319
collection of debt, officers not responsible for, 52-323
contents of notices, 52-320
fees chargeable, disposition, 52-322
satisfaction of agreement, duty to file, 52-321
Stolen livestock
forfeiture of vehicles used in transporting, 94-35-204
possession as evidence of larceny, 94-2704.1
Taxation—See TAXATION, Livestock
Trespassing stock
forest reserves, land in or adjoining to be marked, 46-1411
claim for damage not allowed in absence of marking, 46-1413

LOANS
Consumer loan act, 47-201 to 47-228—See CONSUMER LOAN ACT
Interest, legal rate, 47-124
Minors, capacity to borrow for education, 64-106
Real estate loans by banks, limitation on, 5-506
Secured Transactions chapter, laws unaffected by, 87A-9-201

LOBBYING
Briefs or statements, depositing copies with secretary of state, when, 43-806
Docket
appearance of name on docket before practice as a lobbyist, 43-806
definition, 43-802
name of lobbyist to be entered on, 43-804
preparation and keeping by secretary of state, 43-805
public record, inspection, 43-805
License of lobbyist
application, 43-803
eligibility for, 43-803
expiration, 43-803
fee, 43-803
required, 43-806
suspension or revocation of license, 43-803
"Lobbying" defined, 43-802
Lobbying privileges, suspension, when, 43-803
"Lobbyist" defined, 43-802
"Pecuniary interest" defined, 43-802
Persons not required to be licensed or registered, 43-807
Principal
definition, 43-802
entering name of lobbyist on docket, duty, 43-804
Purpose of act, 43-801
Secretary of state
preparation and keeping of docket, 43-805
weekly report to legislature, 43-805
"Unprofessional conduct" defined, 43-802
Violations of act, penalty, 43-808
Written authorization to act, filing by lobbyist, 43-805

References are to Title and Section numbers

LONG-TERM CARE FACILITIES

Advisory council on hospitals and long-term care facilities, composition and appointment, 69-5214
- meetings of council, 69-5215
- term of members, 69-5215

Alteration of facilities, approval of state board required, 69-5212
Confidential nature of information received by state department, 69-5218
Freedom of choice of physician protected, 69-5217
Injunction for protection of health and welfare, 69-5220
License required for operation of facility, 69-5203
- application for license, procedure, 69-5205
- definition of terms, 69-5201
- denial of license, grounds, 69-5207
  - judicial review of denial of license, 69-5211
  - procedure for denial, 69-5210
- federal facilities exempt from requirement, 69-5202
- fees for license, 69-5204
- inspection of facility and issuance of license, 69-5206
- records and reports required of facilities, 69-5219
- revocation or refusal to renew license, grounds, 69-5208
  - judicial review of revocation or refusal, 69-5211
  - procedure for revocation or refusal, 69-5210
- rules and standards for facilities, scope and publication by state board, 69-5213, 69-5216

Penalty for violations of licensing chapter, 69-5221

M

MALPRACTICE

Emergency care at scene of accident, restriction on liability for, 17-410

MANDAMUS

Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A
Supreme court proceedings, M. R. App. Civ. P.—See SUPREME COURT, Original proceedings in supreme court

MARRIAGE

Age when marriage permitted, 48-143
Annulment of marriage, action for, 48-203
- child custody and support, orders concerning, 48-207
- conciliation petition filed, stay of proceedings after, 36-204
- legitimacy of children unaffected by judgment, 48-207
- minority as ground for annulment, 48-202
- registrar of vital statistics, report to, 69-4433
  - judicial information included in report, 69-4434
- time within which action to be brought, 48-203

Breach of promise
- acts within state not to give rise to cause of action, 17-1203
- cause of action abolished, 17-1202
- litigation and threat of litigation prohibited, 17-1204
- penalty for bringing action, 17-1206
- settlements and compromises void, 17-1205

Capacity to marry, 48-143
Certificate of marriage, report to registrar of vital statistics, 69-4432
Conciliation of controversies, 36-201 to 36-205—See HUSBAND AND WIFE, Conciliation of controversies
Consent of parent or guardian, when required, 48-143
Declaration of marriage without solemnization
- drafting of declaration, persons authorized, 48-130.1
- penalty for violation of act, 48-130.2

Foreign marriages, recognition in this state, 48-150
License to marry
- applicant under influence of liquor or drug, license not to be issued, 48-147
- application for license, form, 48-144

MARRIAGE (Continued)
License to marry (Continued)
consent of parent or guardian, when required, 48-143
county in which license must be obtained, 48-146
dispensation to issue license before end of waiting period, 48-118.1
issuance of license, 48-149
nonresident applicants, place of issuance of license, 48-146
objections to issuance of license, filing and hearing on, 48-149
policy of state, applicants advised concerning, 48-145
posting of notice of application for license, 48-149
required for marriage, 48-146
support obligation, license not issued to persons delinquent, 48-148
waiting period before issuance of license, 48-118.1
Policy of state concerning marriage, 48-142
advice to license applicants of policy, 48-145
Proof of age before issuance of license, 48-134
Proof of solemnization of marriage
acknowledgment and recording of declaration of marriage, 48-132
contents of written declaration, 48-131
method of proof when no record exists, 48-131
official record of marriage, 48-132

MASSEURS
Definitions, 66-2902
Exemptions, 66-2914
Licenses required for practice of massage, 66-2905
application for license, 66-2906
examination for licenses, 66-2907
waiver of examination for masseurs practicing before passage of law, 66-2905
fees for licenses, 66-2906
disposition of funds, 66-2910
receipts and disbursements out of fund, 66-2910
foreign practitioners, admission to practice, 66-2912
refusal of license, 66-2908
renewal of license, 66-2909
revocation of license, 66-2908
temporary permits to license applicants, 66-2905
Penalty for violation of act, 66-2913
Purpose of regulatory act, 66-2901
State board of massage examiners, qualifications and appointment, 66-2903
bond of treasurer, 66-2911
dismissal and replacement of board members, 66-2911
meetings, 66-2904
organization of board, 66-2904
per diem for board members, 66-2910
powers and duties, 66-2904

MASTERS
Appointment and compensation by district court, M. R. Civ. P., Rule 53(a)
Findings of master, adoption by court, M. R. Civ. P., Rule 52(a)
Powers of master, M. R. Civ. P., Rule 53(c)
Pre-trial conference, consideration of reference to master, M. R. Civ. P., Rule 16
Proceedings before masters, M. R. Civ. P., Rule 53(d)
Reference to master, M. R. Civ. P., Rule 53(b)
Report of master, M. R. Civ. P., Rule 53(e)
Statement of accounts submitted to master, M. R. Civ. P., Rule 53(d)
Witnesses before masters, M. R. Civ. P., Rule 53(d)

MATTRESSES
Shoddy control, 69-4701 to 69-4707—See SHODDY

MAUSOLEUMS AND COLUMBARIUMS
Limitation of action against mausoleum-columbarium authority, 9-604
Mortician exempt in damages for remains delivered to authority, 9-604

References are to Title and Section numbers

MEAT
Markets, 27-611 to 27-625—See FOOD AND DRUGS, Food service establishments
Sale by weight required, 90-613

METROPOLITAN SANITARY AND STORM SEWERS
Boundary changes in districts, 16-4414
Distance from which pollution is presumed, 16-4415
Operation and maintenance
budget
filed with county clerk, 16-4416.2
laws governing, 16-4416.3
public hearing on levy, notice, 16-4416.1
records of collections and expenditures, 16-4416.4
Rates, charges and rentals, establishment, 16-4416
Reserve fund, establishment, maintenance and use, 16-4417
Validation of previous proceedings, 16-4418

MILITIA AND MILITARY
Adjutant general, qualifications and appointment, 77-117
duties, 77-120
salary, 77-117, 77-120
Armories
agreements with federal government, assent to, 77-417
gifts and donations, acceptance, 77-419
National Defense Facilities Act, acceptance, 77-417
physical plant fund abolished, 79-416
title to property acquired, 77-419
Arrest, members privileged from arrest, 95-616
Assistant adjutant general, 77-117
Federal installations and facilities donated, acceptance by board of examiners, 81-1101.1
National guard
claims against guard appropriation, method of presenting and payment, 77-151
employees members of public employees' retirement system, 68-1316
vehicles of guardsmen, distinctive plates authorized, 53-106.7
Post-attack resource management, 77-1501 to 77-1508—See WAR, Resource management
Post-enemy-attack continuity in government, V, 46; 82-3801 to 82-3809—See WAR, Continuity in government
Residence in Montana, establishment for university tuition and fees, 75-506.4

MILK CONTROL BOARD
See DAIRIES AND DAIRY PRODUCTS

MINES AND MINING
Minimum standards for roof support, 50-474
daily inspection by mine foreman, 50-501
violation of act, penalty, 50-475
Real estate brokers' act inapplicable to dealings in mineral interest, 66-1926
Right of way to mines and mining claims
alternate facilities to be constructed when roads and alleys condemned for open pit mining, 50-814
residential property near open pit mine
agreement to purchase prerequisite to condemnation of right of way, 50-813
measure of compensation on condemnation, 50-815
notice to owners of intent to condemn, 50-816
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
Safety standards for roof supports in coal mines, 50-474
Strip coal mining
license tax provisions, 84-1302 to 84-1304

MINES AND MINING (Continued)
Strip coal mining (Continued)
reclamation of lands
conservation agencies, co-operation with bureau of mines, 50-1003
contracts with mine operators for reclamation purposes, 50-1002
credit on taxes, 50-1004
inspection of mines, 50-1004
reports of state board of equalization, 50-1004
suits by and against bureau of mines on contracts, 50-1002
public policy stated, 50-1001

MISREPRESENTATION
Uniform Commercial Code supplemented by general principles of law, 87A-1-103

MISTAKE
Uniform Commercial Code supplemented by general principles of law, 87A-1-103

MOBILE HOMES
Fees in addition to registration and license fees, 32-3305, 53-615
Taxation, 84-6601 to 84-6607—See TAXATION, Mobile homes

MONTANA RETAIL INSTALLMENT SALES ACT
Text of act, 74-601 to 74-612—See INSTALLMENT SALES ACT

MONTANA TRADE COMMISSION
Review of orders, application of rules of civil procedure to, M. R. Civ. P., Rule 81(a), Table A

MORTGAGES
Assignment of mortgage, recording and filing, 52-114
Chattel mortgages, 87A-9-101 to 87A-9-507—See SECURED TRANSACTIONS
Definition of term, 19-103
Foreclosure
attorney fee to be allowed by court, 93-8613
deficiency judgment, docketing, 93-6001
parties to foreclosure action, 93-6001
power of sale contained in mortgage, alternatives available, 93-6004
advertising required for sale under power, 93-6005
attorney fees allowed to mortgagee, 93-6007
redemption of property sold under power, 93-6006
proceeds of sale, application, 93-6001
sale of property directed by court, 93-6001
Negotiability of note secured by mortgage, 93-6010
Real and personal property, mortgages covering both, 52-212
Small tract financing act, 52-401 to 52-417—See TRUST INDENTURES
Subordination of mortgage agreement, recording, 52-116
Uniform Commercial Code, conflicts with general mortgage law, 52-117
Unit ownership property, attachment and release of mortgages against, 67-2324
blanket mortgages, release on conveyance of units, 67-2323
individual units, encumbering permitted, 67-2304
Validation of defectively executed instruments, 73-207 to 73-209
Waiver of mortgage in favor of subsequent interest, recording, 52-116

MORTICIANS AND FUNERAL DIRECTORS
Autopsies ordered by coroner, liability of mortuary limited, 95-813
Cremated remains delivered to mausoleum-columbarium authority, exemption from liability on, 9-604
Definition of terms, 66-2701
Fees payable to state board of morticians
annual license fee of morticians, 66-2711
deposit and use of fees, 66-2706
examination fee for morticians, 66-2709
funeral directing annual fee, 66-2707
intern mortician's license fee, 66-2710
mortuary license, 66-2713

References are to Title and Section numbers

MORTICIANS AND FUNERAL DIRECTORS (Continued)
Inspection of mortuary, 66-2713
Insurers, prohibited relations with, 40-3521
Licenses
annual renewal of mortician's license, 66-2711
examination of applicants for mortician's license, 66-2709
funeral director's license issued to previous licensees, 66-2707
intern mortician's license, 66-2710
mortuary license, 66-2713
previously licensed embalmers, licensing as mortician, 66-2711
qualifications for mortician's license, 66-2708
reciprocal licensing without examination, 66-2712
required for practice of embalming or mortuary science, 66-2708
revocation or suspension of license
appeal to district court from decision of board, 66-2716
grounds for revoking or suspending funeral director's license, 66-2714
hearing and notice on suspension or revocation, 66-2715
mortuary license, grounds for suspension or revocation, 66-2713
Rules and regulations, adoption by board, 66-2704
Sanitary standards for mortuary, 66-2713
State board of morticians
appointment of members, 66-2702
compensation of members, 66-2703
employees of board, 66-2705
meetings of board, 66-2704
officers of board, 66-2703
quorum of board, 66-2704
term of office of members, 66-2702
Violation of act as misdemeanor, 66-2717

MOTELS
See HOTELS AND MOTELS

MOTIONS
Ambiguous pleadings, motion for more definite statement, M. R. Civ. P., Rule 12(e)
Appearance, filing of motion by defendant constituting, 93-8505
Application for order to be by motion, M. R. Civ. P., Rule 7(b)
Consolidation of defenses required, M. R. Civ. P., Rule 12(g)
Criminal cases, 95-1701 to 95-1710—See CRIMINAL PROCEDURE, Pretrial motions
appeals, requirements for motions, 95-2415
filing with judge, 95-2413
new trial, motion for, 95-2101
post-conviction hearing, time for motion, 95-2604
Defenses permitted by motion, M. R. Civ. P., Rule 12(b)
Directed verdicts, motion for, M. R. Civ. P., Rule 50
Evidence presented on hearing of motions, M. R. Civ. P., Rule 43(e)
Failure to state claim raised by motion, M. R. Civ. P., Rule 12(b)
Filing with court required, M. R. Civ. P., Rule 5(d)
Findings of fact unnecessary in ruling on motion, M. R. Civ. P., Rule 52(a)
Form of motion prescribed, M. R. Civ. P., Rule 7(b)
Forms suggested by rules, M. R. Civ. P., Appendix of Forms, Forms 15, 19, 20
Hearing and determination before trial, M. R. Civ. P., Rule 12(d)
Insufficiency of process raised by motion, M. R. Civ. P., Rule 12(b)
Judgments on pleadings, motion for, M. R. Civ. P., Rule 12(c)
Jurisdictional defenses raised by motion, M. R. Civ. P., Rule 12(b)
Mistaken judgment or order, grounds and procedure for relief from, M. R. Civ. P., Rule 60
New trial, motion for, M. R. Civ. P., Rule 59
Parties, defects raised by motion, M. R. Civ. P., Rule 12(b)
Service on parties, when required, M. R. Civ. P., Rule 5(a)
Striking pleadings or matter therein, motion for, M. R. Civ. P., Rule 12(f)
Summary judgment, motion for, M. R. Civ. P., Rule 56
Time allowed for hearing of motions, M. R. Civ. P., Rule 6(d)
Time allowed for pleading after ruling on motions, M. R. Civ. P., Rule 12(a)
Waiver of defenses by failure to move, M. R. Civ. P., Rule 12(h)

References are to Title and Section numbers

MOTORBOATS

Accidents
- accident report form, 69-3512
- duty of operators to render aid, 69-3512
- investigation by sheriff, 69-3512

Boat liveries
- record of persons hiring, required to be kept, 69-3507
- safety equipment required, 69-3507

Boats with operative federal approved numbering system, 69-3504
Civil liability of owner, 69-3515
Definitions, 69-3502
Enforcement of act, 69-3517
Garbage, refuse or waste, discharge from boat prohibited, 69-3508.1
- equipment required on boats, 69-3505
- penalty for violation, 69-3508.2

Gasoline tax money allocated to park improvement where boating allowed, 32-2601
Landowner's restricted liability to gratuitous licensee for boating, 67-808
- definition of recreational purposes, 67-809

Legislative policy, 69-3501
Liability of owner for negligence, 69-3515
Numbering
- application for number, 69-3504
- change of address, 69-3504
- exemptions from, 69-3506
- fee for application, 69-3504
- manufacturers or dealers, 69-3504
- operation of unnumbered motorboats or vessels prohibited, 69-3503
- painting or attaching of number to boat, 69-3504
- period of time number to remain in effect, 69-3504
- transfer of ownership of boat, 69-3504

Operating, prohibited actions, 69-3508
Operation of unnumbered motorboats or vessels prohibited, 69-3503
Overloading prohibited, 69-3511
Overpowering prohibited, 69-3511
Penalty for violations of act, 69-3518
Prohibited operation, 69-3508
Property tax on vessel, proof of payment required, 69-3504
Restricted areas, 69-3510
Right-of-way, 69-3509
Rules and regulations, 69-3516
Safety equipment required, enumeration, 69-3505
Toilet facilities on boats, specifications, 69-3505
Transfer of ownership, 69-3504
Transmittal of information, 69-3513
Violations of act, penalty, 69-3518
Water-skis or surfboards, hours during which operation prohibited, 69-3514

MOTOR CARRIERS

Acts deemed prima facie indication of status as motor carrier, 8-121
Board of railroad commissioners, regulatory powers, 8-103
Certificate of convenience and necessity
- class A carriers, 8-108
- class B carriers, 8-109
- class C carriers, 8-110

Definition of terms, 8-101
Field inspectors, employment and powers, 8-103
Municipal taxes and fees, restriction on, 32-3206
Penalty for violations of act, 8-119
Rate regulation
- board's duty to fix rate, 8-104.1
- changes in schedule, approval by board required, 8-104.2
  - procedure for approval, 8-104.5
- deviation from schedules prohibited, 8-104.3
- differences between classes of carriers to be recognized, 8-103

MOTOR CARRIERS (Continued)
Rate regulation (Continued)
discrimination prohibited, 8-104.4
filing of schedules with board, 8-104.2
investigation of complaints, 8-104.4
preferences prohibited, 8-104.4
recovery of excess charges, 8-104.6
suspension of schedules by board, 8-104.5
Securities, when exempt from securities act, 15-2013
Supervisor of motor carriers, appointment, qualifications and duties, 8-103

MOTOR VEHICLES
Abandoned vehicles
notice to owner of removal, 53-903
penalty for violation of act, 53-909
prohibition against leaving vehicles on highways or public property, 53-901
reclaiming vehicles removed by officers, 53-904
removal of vehicles by law enforcement agencies, 53-902
sale of vehicle if not reclaimed, 53-905
certificate of ownership, issuance to buyer, 53-907
certificate of sale, issuance and contents, 53-906
proceeds of sale, disposition, 53-908
return of sale by sheriff, 53-908
Arrest bond certificates issued by automobile club or insurance company, 95-1121 to 95-1123
Brakes required on vehicles, 32-21-143.1
hydraulic brake fluid, standards and regulation, 32-21-143.4
maintenance and adjustment of brakes required, 32-21-143.3
performance required of brakes, 32-21-143.2
Dealers
amount of fees payable for plates, 53-122
application for license, contents, filing and verification, 53-118
bond required of dealer, 53-118
building or lot required of dealer, 53-118
definition of dealer, 53-133
demonstration permits for trucks and trailers, 53-118.1 to 53-118.5—See Demonstration of trucks and trailers, below
investigation of license applications, 53-118
penalty for engaging in business without license, 53-118
plates assigned to dealers, description and use, 53-118
records of purchases and sales required of dealers, 53-118
used cars, certificate as to previous ownership to be delivered, 53-133
Demonstration of trucks and trailers, permit required, 53-118.1
dealer's plate, display required, 53-118.1
duration of permit, 53-118.3
fee required for permit, 53-118.2
disposition of fees, 53-118.5
form of permit and application, 53-118.2
lease of vehicle under permit prohibited, 53-118.3
number of permits authorized on each application, 53-118.2
operation of vehicle under permit, 53-118.3
violation of provisions as misdemeanor, 53-118.4
Drive-away and tow-away transporters
annual permit fee payable, 32-3401
carrier fees additional to transporter fees, 32-3404
disposition of fees collected, 32-3403
exemption from payment of transporter fees, 32-3406
plates and devices issued to transporters, 32-3401
trip fees payable by transporters, 32-3402
truck and trailer fees, exemption from payment, 32-3405
Driver education courses, 75-5301 to 75-5309—See SCHOOLS, Driver education program
Emergency vehicles, audible and visible signals on, 32-21-132
Equipment required on commercial tow cars, 32-21-161
penalty for violation, 32-21-162

MOTOR VEHICLES (Continued)

Equipment Safety Compact ratified, text, 32-21-166
- accounts of safety commission, inspection by state examiner, 32-21-174
- budget of safety commission, 32-21-173
- commissioner from state to serve on safety commission, designation, 32-21-169
- co-operation of governmental agencies with safety commission, 32-21-171
- documents of commission to be filed with highway patrol board, 32-21-172
- governor is executive head for purposes of compact, 32-21-175
- legislative approval required for commission rules and regulations, 32-21-168
- legislative findings on equipment safety, 32-21-167
- notices to be given to highway patrol supervisor, 32-21-172
- retirement agreements for commission employees, 32-21-170
- statutory requirements continued in force, 32-21-168

Fees payable in addition to registration and license fees
- administrative costs retained by county treasurer, 32-3204
- alternative additional fees on truck-trailer combinations, 32-3302.1
- buses, amounts payable, 32-3307
- credit of fees to highway commission, 32-3205
- expiration date of fees, 32-3202
- farm and ranch vehicles, amounts payable, 32-3306
- foreign registered vehicles, amount of fees payable, 32-3312
  - temporary permits for operation of foreign vehicles, 32-3313
  - time for payment of fees by nonresidents, 32-3314
- half year fee payable after July 1, 32-3201
- marking of vehicles required, 32-3311
- municipal fees, restriction on, 32-3206
- penalty for operation without payment of fees, 32-3316
  - exceeding weight for which registered, unloading and reloading required, 32-3317
- quarterly payment of fees, when permitted, 32-3308
  - failure to make quarterly payment, misdemeanor, impoundment of vehicle, 32-3309
- remittance by county treasurer to state treasurer, 32-3204
- replacement vehicle, transfer of certificate, registration or license to, 32-3203
- sales tax on new passenger vehicles, 32-3315
- soil conservation and land leveling vehicles, special rate, 32-3306
- three-unit combination fee in lieu of other fees, 32-3310
- time for payment of fees, 32-3201
- trailers and semitrailers
  - amount payable as fees, 32-3302
  - co-operative association vehicles exempt, 32-3306
  - farm and ranch trailers, percentage payable, 32-3306
  - gross weight over 42,000 pounds, additional amounts payable, 32-3303
  - house trailers, amount of fee, 32-3305
  - livestock trailers, percentage payable, 32-3304
  - log trailers, percentage payable, 32-3304
  - low-boy trailers, percentage payable, 32-3304
  - pole trailers, percentage payable, 32-3304
- transfer of certificate, registration or license to another owner, 32-3203
- trucks and truck-tractors
  - amount of fees payable, 32-3301
  - concrete trucks, percentage payable, 32-3304
  - co-operative association vehicles exempt, 32-3306
  - farm and ranch trucks, percentage payable, 32-3306
  - gross weight over 42,000 pounds, additional amounts payable, 32-3303
  - livestock trucks, percentage payable, 32-3304
  - log trucks, percentage payable, 32-3304
  - low-boy trailers, trucks used to haul, 32-3304

Guaranteed arrest bond certificates issued by automobile club or insurance company, 95-1121 to 95-1123

Insurance, uninsured motorist coverage added unless rejected, 40-4403

License plates
- collector's vehicles, 53-106.1
- dealers' plates, 53-118

MOTOR VEHICLES (Continued)
License plates (Continued)
fees payable, disposition and use, 53-106, 53-122
foreign commercial vehicles, Montana plates required, 53-129
national guard plates authorized, 53-106.7
proportionally registered vehicles, plates or stickers issued for, 53-713
specifications for plates, 53-106
Liens on vehicles, filing and foreclosure, 53-110
Livestock, collision with, negligence not presumed, 32-1020
Municipal power to tax and regulate vehicle yards, 11-918
Operation across public roads and highways not considered operation on roads, when, 32-2124.1
Parking facilities, municipal power to acquire and construct, 11-986
Ports of entry and checking stations, establishment by highway commission authorized, 32-2419
co-operation of highway commission with other agencies required, 32-2421
major highways entering state, checking stations required, 32-2420
Radar arrests
admissibility in evidence, 32-2150.1
arrest without warrant authorized, 32-2150.2
erection of signs as prerequisite to arrests, 32-2150.3
posting of signs in municipalities, 32-2150.3
use of radar authorized, 32-2150.1
Reciprocal privileges of interstate fleets
agreements with other states authorized, 53-705
filing and availability of agreements, 53-722
base state registration reciprocity, 53-706
cancellation of reciprocity benefits, grounds for, 53-721
continuation in force of previously effective agreements, 53-723
definition of terms, 53-702
exemptions and benefits of agreements with other states, 53-706
extent of reciprocity, determination by reciprocity board, 53-708
identification plates or stickers, issuance, 53-713
leased vehicles, application to, 53-709
policy of state declared, 53-701
proportional registration
additional vehicles, registration, 53-715
agreements with other states, implementation by reciprocity board, 53-707
alternative methods of registration, 53-711
application for proportional registration, 53-712
cost of vehicle to be included in application, 84-729
denial in absence of reciprocity, 53-718
effect of registration, 53-713
fees for registration, computation, 53-712
general registration laws inapplicable, 53-720
identification plates or stickers, issuance, 53-713
joint audits of fleet owner's records, 53-719
new fleets, determination of fees payable, 53-717
other jurisdiction, registration of part of fleet in required, 53-714
records, preservation and availability, 53-719
taxation of proportionally registered fleets
apportionment on basis of in-state miles traveled, 84-727
assessment for property tax by state board, 84-727
collection of tax by state board, 84-730
cost of vehicle included in application for registration, 84-729
deposit and distribution of taxes, 84-731
partial year's tax payable, 84-727
rate of levy applied, 84-729
registration of vehicle, payment of tax condition precedent to, 84-727
situs in state of vehicles for purposes of taxation, 84-730
value of fleet, method of computation, 84-728
withdrawal of vehicles from registration, credits to account, 53-716
reciprocity board, creation, organization, and meetings, 53-703
powers of board, 53-704

References are to Title and Section numbers

MOTOR VEHICLES (Continued)
Reciprocal privileges of interstate fleets (Continued)
reciprocity extended without agreement, 53-710
supplemental to other laws, 53-724
suspension of reciprocity benefits, grounds for, 53-721
Registration
collector's vehicles, 53-106.1
fees payable, disposition and use, 53-106, 53-122
city road fund in population centers, amount and segregation, 32-3702
use of city road fund, 32-3703
city road fund other than in population centers, amount and segregation, 32-3704
use of city road fund, 32-3705
county motor vehicle fund, fees credited to, 32-3701
transfer of amounts remaining after segregation of city fund, 32-3702, 32-3704
use of moneys in county road fund, 32-3706
fleet registration, 53-701 to 53-724—See Reciprocal privileges of interstate fleets, above
foreign commercial vehicles, registration required, 53-129
liens and security interests in vehicles, filing and satisfaction, 53-110
peace officers to enforce law, 53-102
suspension under financial responsibility act, 53-422
tax on vehicles, procedure to insure payment, 53-114
used cars, dealer to deliver certificate as to previous ownership, 53-133
Regulations of licensing and taxing extends only to vehicles operated on public roads, 32-2124.2
Road blocks, arrests at, 95-618
Safety program, 32-4601 to 32-4607—See HIGHWAYS, BRIDGES AND FERRIES, Traffic safety program
Sales tax on new motor vehicles, amount and payment required, 32-3315
School buses, flashing red and amber lights on, 32-21-132
use of lights when stopped or preparing to stop, 32-2197
Seat belts required in new vehicles, 32-21-150.1
penalty for violations, 32-21-150.3
specifications for seat belts, 32-21-150.2
Speed contests, permission of authorities required, 32-2143.1
drag racing, penalty, 32-2143.2
Taxing of vehicles or fuels extends only to vehicles operated on public roads, 32-2124.2
Taxing of mobile homes, 84-6601 to 84-6607
Tax levy, assessment and registration provisions, 53-114, 84-406, 84-6008
Traffic rules and regulations
approach ramp, duty of driver entering or crossing highway from, 32-2173
automatic signals, meaning of signs, 32-2137
controlled access facilities, authority to regulate use, 32-4305
violation of regulations, penalties, 32-4311
county commissioners empowered to restrict traffic on county roads, 32-2802
fines, forfeitures and assessments, disposition, 31-114
operation of vehicles across public roads and highways not considered operation on roads, when, 32-2124.1
penalty assessment for driver education, 31-114, 75-5304
administrative expenses paid from account, 75-5308
allocation and disbursement of funds to schools, 75-5308
bail deposited, assessment added to, 75-5305
juvenile offenders, assessments levied against, 94-801-2
statements of assessments furnished by courts and local treasurers, 75-5309
transmittal of assessments to state treasurer, 75-5306, 75-5307
school safety patrol, drivers required to stop for, 32-2177
sign manual, state highway commission to adopt, 32-2133
signs, state highway commission to place and maintain, 32-2134
speed contests, permission of authorities required, drag racing, penalty, 32-2143.2
traffic lights, meaning of signals, 32-2137
"yield" sign, duty of driver approaching, 32-2174
Traffic safety program, 32-4601 to 32-4607—See HIGHWAYS, BRIDGES AND FERRIES, Traffic safety program

References are to Title and Section numbers

MOTOR VEHICLES (Continued)
Transit permits for movement of unregistered vehicles, 53-119.1
Trucks, tractors and trailers
additional fees payable, 32-3301 to 32-3317—See Fees payable in addition to registration and license fees, above
combination length and weight restrictions, 32-1123
demonstration permits, 53-118.1 to 53-118.5—See Demonstration of trucks and trailers, above
fleet registration, 53-701 to 53-724—See Reciprocal privileges of interstate fleets, above
hauled vehicles exempt from requirements, 53-638.1
owner's name and certificate number to be displayed, 53-801
dealers and manufacturers exempt, 53-802
penalty for violations, 53-803
special mobile equipment defined, 53-642
assessment of taxes, time of, 84-406
identification plate required, annual fee, 32-3707
weight violations, disposition of fines and penalty assessments, 32-1131
Unlawful operation by child under 18
concurrent jurisdiction of district and inferior courts, 32-21-163
court learning of unlawful operation, proceedings, 32-21-165
impounding the vehicle, when, 32-21-163
penalty, 32-21-163
summoning of child, 32-21-164

MOUNTAIN VIEW SCHOOL
See STATE INSTITUTIONS, Juvenile facilities, 80-2202 et seq.

MUNICIPAL COURTS
Criminal jurisdiction, 95-303

MUSEUMS
Historical independent of other institutions, 44-518

N

NEGLIGENCE
Emergency care rendered at scene of accident, restriction on liability for, 17-410

NEGOTIABLE INSTRUMENTS
See COMMERCIAL PAPER, 87A-3-101 to 87A-3-805

NEWSPAPERS
Investment advice exempt from securities act, 15-2004

NEW TRIAL
Criminal cases, motion for, 95-2101
appeal, authority to order new trial, 95-2426
bail, provisions for, 95-1119
Grounds and procedure, M. R. Civ. P., Rule 59
Stay of proceedings to enforce judgment pending motion for new trial, M. R. Civ. P., Rule 62(b)

NONPROFIT CORPORATION ACT
Actions by and against corporations
involuntary dissolution, commencement of action, 15-2353
survival of remedy after dissolution, 15-2362
Amendment of articles of incorporation—See Articles of incorporation, amendments, below
Annual reports of domestic and foreign corporations, 15-2381
failure to file, penalty, 15-2385
filing of report, 15-2382
fee for filing, 15-2383

References are to Title and Section numbers

NONPROFIT CORPORATION ACT (Continued)
Appeal from ruling or decision of secretary of state, 15-2388
Applicability of Religious Corporation Sole Act, 15-2402
Application of act, 15-2303
Articles of dissolution—See Dissolution, articles of dissolution, below
Articles of incorporation
amendments
disapproval by secretary of state, appeal to district court, 15-2388
merger or consolidation of corporations, 15-2342
procedure to amend, 15-2334
right to amend, 15-2333
articles of amendment
certificate of amendment, issuance by secretary of state, 15-2336
effect of certificate, 15-2236
fee for issuing, 15-2383
execution by corporation, 15-2335
fee for filing, 15-2383
form and contents, 15-2335
disapproval by secretary of state, appeal to district court, 15-2388
fee for filing, 15-2383
filing of articles, 15-2330
foreign corporation, amendment to articles, filing, 15-2373
form and contents, 15-2329
greater voting requirements, effect, 15-2391
restated articles of incorporation, 15-2337
certificate of restatement, issuance
effect, 15-2337
fee, 15-2383
filing, fee, 15-2337, 15-2383
waiver of notice requirements, 15-2392
Books and records, 15-2325
Bylaws
adoption by board of directors, contents, 15-2312
power to alter, amend or repeal, 15-2312
definition, 15-2302
Certificate of incorporation
fee for issuing, 15-2383
issuance by secretary of state, 15-2330
effect of issuance, 15-2331
Committees of board of directors, appointment and powers, 15-2321
Consolidation—See Merger or consolidation, below
Definitions, 15-2302
Directors
bylaws, adoption, modification, 15-2312
committees, appointment and powers, 15-2321
consent to action taken without a meeting, 15-2393
election, 15-2318
false statements in documents, penalty, 15-2386
liquidation of assets and business of corporation, grounds for action, 15-2354
loans from corporation prohibited, 15-2327
management of corporation, 15-2317
meetings, place and notice, 15-2322
consent to action without a meeting, 15-2393
waiver of notice, 15-2322, 15-2392
nonliability for corporate obligations, 15-2311
number, 15-2318
listing in articles of incorporation, 15-2329
officers of corporation as ex officio members of board, 15-2323
organization meeting, 15-2332
qualifications, 15-2317
quorum, 15-2320
removal from office, 15-2318
survival of remedy after dissolution, 15-2362
term of office, 15-2318
vacancies, filling of, 15-2319

References are to Title and Section numbers

NONPROFIT CORPORATION ACT (Continued)
Dissolution
appeal from disapproval by secretary of state, 15-2388
articles of dissolution, 15-2349
execution, form and contents, 15-2349
fee for filing, 15-2383
filing with secretary of state, 15-2350
attorney general, notice from secretary of state as to corporations subject to involuntary dissolution, 15-2352
commencement of action and procedure, 15-2352
involuntary dissolution
grounds for, 15-2351
liquidation—See Liquidation, below
notice to attorney general by secretary of state of corporations subject to, 15-2352
venue and process, 15-2353
survival of remedy after dissolution, 15-2362
voluntary dissolution, 15-2345
articles of dissolution, filing, 15-2349, 15-2350
assets due unknown persons, deposit with state treasurer, 15-2361
certificate of dissolution, 15-2350
distribution of assets, 15-2346
plan of distribution, 15-2347
revocation of voluntary proceedings, 15-2348
Dividends prohibited, 15-2326
Enforcement by secretary of state, 15-2387
Evidence, certificates and certified copies issued by secretary of state to be received, 15-2389
Fees
certified copies, 15-2384
filing documents and issuing certificates, 15-2383, 15-2384
Foreign corporations
actions by and against corporations, 15-2364
failure to obtain certificate of authority, effect of, 15-2380
service of process, 15-2372
admission of foreign corporation, 15-2363
annual report required, contents, 15-2381
failure to file, penalty, 15-2385
filing of report, 15-2382
fee, 15-2383
application of act, 15-2303
articles of incorporation, amendment, filing, 15-2373
filing fee, 15-2383
certificate of authority
amended certificate, requirements for securing, procedure, 15-2375
application fee, 15-2383
application, contents, execution, 15-2367
filing of application, 15-2368
failure to obtain certificate, effect, 15-2380
fee for issuing, 15-2383
issuance of certificate, effect, 15-2368, 15-2369
limitations on issuance, 15-2363
required to transact business in state, 15-2363
revocation of certificate of authority
appeal from secretary of state, 15-2388
grounds, 15-2378
issuance of certificate of revocation, 15-2379
definition, 15-2302
merger of foreign corporation authorized to do business in state, 15-2374
articles of merger, fee for filing, 15-2383
merger or consolidation with domestic corporations, 15-2343
name of corporation
change of name, 15-2366
reservation of right to exclusive use, 15-2309
restrictions on contents of name, 15-2365

References are to Title and Section numbers

NONPROFIT CORPORATION ACT (Continued)
Foreign corporations (Continued)
powers of foreign corporation, 15-2364
registered agent required, 15-2370
change of registered agent, 15-2371
registered office required, 15-2370
change of registered office, 15-2371
service of process on foreign corporation, 15-2372
withdrawal of foreign corporation
application for withdrawal, contents, 15-2376
filing fee, 15-2383
filing of application, 15-2377
certificate of withdrawal, requirements for, issuance, 15-2376, 15-2377
Health service corporations, 15-2304
Incorporation
articles of incorporation—See Articles of incorporation, above
certificate of incorporation, 15-2330, 15-2331
Incorporators, 15-2328
listing in articles of incorporation, 15-2329
organization meeting, calling of, 15-2332
Invalidity of part of act, effect of, 15-2397
Liquidation
assets due unknown persons, deposit with state treasurer, 15-2361
creditors, grounds for action for liquidation, 15-2354
filing of claims and notice, 15-2357
decree of dissolution
effect of decree, 15-2359
entry of decree by court, 15-2359
filing of decree, 15-2360
directors, grounds for action for liquidation, 15-2354
discontinuance of proceedings, 15-2358
grounds for liquidation of assets and business of corporation, 15-2354
jurisdiction of district courts, 15-2354
members, grounds for action for liquidation, 15-2354
procedure
liquidation by court, 15-2355
voluntary dissolution, 15-2346, 15-2347
receivers
appointment by court, 15-2355
authority of receivers, 15-2355
compensation, 15-2355
expenses, payment from assets or proceeds of sale, 15-2355
qualifications, 15-2356
Loans to directors and officers prohibited, 15-2327
Members
classes of members, designation, election or appointment, qualifications, 15-2311
consent to action taken without a meeting, 15-2393
corporation may have no members, 15-2311
definition, 15-2302
liquidation of assets and business of corporation, grounds for action, 15-2354
meetings
annual meeting of members, time and place, 15-2313
consent to action taken without a meeting, 15-2393
quorum, 15-2316
special meetings, 15-2313
voting rights of members, 15-2315
articles of incorporation to control, 15-2391
written notice required, 15-2314
waiver, 15-2392
membership certificates, issuance by corporation, 15-2311
nonliability for corporate obligations, 15-2311
organization meeting, 15-2332
survival of remedy after dissolution, 15-2362

References are to Title and Section numbers

NONPROFIT CORPORATION ACT (Continued)

Merger or consolidation
- appeal from disapproval by secretary of state, 15-2388
- articles of merger or consolidation
  - execution by each corporation, 15-2341
  - filing in office of secretary of state, 15-2341
    - fee for filing, 15-2383
  - form and contents, 15-2341
- certificate of consolidation
  - effect of issuance, 15-2342
  - issuance by secretary of state, 15-2341
    - fee, 15-2383
- certificate of merger
  - effect of issuance, 15-2342
  - issuance by secretary of state, 15-2341
    - fee, 15-2383
- consolidation, procedure for, 15-2339
- domestic and foreign corporations, 15-2343
- foreign corporation authorized to do business in state, filing of articles of merger, 15-2374
- merger, procedure for, 15-2338
- new corporation, rights and liabilities, 15-2342
- plan for merger or consolidation
  - abandonment of plan, 15-2340
  - approval by members, 15-2340
- separate existence of parties to plan ceases, 15-2342
- surviving corporation, rights and liabilities, 15-2342
- reservation of right to exclusive use, 15-2307
  - fee for filing application, 15-2383
  - notice of transfer of reserved name, fee for filing, 15-2383
- restrictions on contents of name, 15-2307

Officers, enumeration and general powers, 15-2323
- appointment or election, 15-2323
- ex officio members of the board of directors, 15-2323
- false statements in documents, penalty, 15-2386
- loans from corporation prohibited, 15-2327
- nonliability for corporate obligations, 15-2311
- removal from office, 15-2324

Organization meetings, notice, 15-2332

Powers of corporation
- general powers enumerated, 15-2305
- ultra vires as a defense, 15-2306
- unauthorized assumption of corporate powers, 15-2394

Purposes for which organized, 15-2304

Receivers—See Liquidation, receivers, above

Registered agent required, 15-2308
- change of registered agent, 15-2309
  - statement of change, fee for filing, 15-2383
- listing in articles of incorporation, 15-2329
- resignation of agent, 15-2309

Registered office required, 15-2308
- change of registered office, 15-2309
  - statement of change, fee for filing, 15-2383
- listing in articles of incorporation, 15-2329

Repeal of prior acts, effect of, 15-2396

Reports
- annual report—See Annual reports of domestic and foreign corporations, above
  - forms to be prescribed by secretary of state, 15-2390

Reservation of power to amend, repeal or modify, 15-2395

Sale, lease, exchange, or mortgage of assets, 15-2344

Secretary of state
- appeal from ruling or decision of secretary of state, 15-2388
- application to reserve corporate name, filing, 15-2307

NONPROFIT CORPORATION ACT (Continued)
articles of amendment
certificate of amendment, issuance, effect, 15-2336
filing, 15-2335
articles of dissolution, filing, certificate, 15-2350
articles of incorporation, filing, 15-2330
certificate of incorporation, issuance of, 15-2330, 15-2331
certified copies, fees for issuing, 15-2384
change of registered office or registered agent, filing of statement, 15-2309
evidence, certificates and certified copies issued by secretary of state to be received, 15-2389
fees for filing documents and issuing certificates, 15-2383, 15-2384
foreign corporations
certificate of authority
amendment, procedure, 15-2375
issuance, 15-2368, 15-2369
revocation, 15-2378, 15-2379
merger, filing of articles, 15-2374
withdrawal, issuance of certificate, 15-2376, 15-2377
forms for reports to be prescribed by secretary of state, 15-2390
involuntary dissolution, notice to attorney general of corporations subject to, 15-2352
merger or consolidation of corporations
articles of merger or consolidation, filing, 15-2341
certification, effect of, 15-2341, 15-2342
power to administer act, 15-2387
restated articles of incorporation, certification, 15-2337
Securities act, exempt securities, 15-2013
Service of process on corporation, 15-2310
foreign corporations, 15-2372
Shares of stock prohibited, 15-2326
Short title, 15-2301
Ultra vires as a defense, 15-2306
Unauthorized assumption of corporate powers, 15-2394
Waiver of notice requirements, 15-2392

NOTES
See COMMERCIAL PAPER, 87A-3-101 to 87A-3-805

NOTICES
Certified and registered mail, 19-122
Radio or television broadcast supplementing notice, 19-201
copy of transcript to be retained by broadcasting station, 19-202
proof of broadcast, 19-203

NUISANCES
Alcoholic beverage bottle clubs constitute, 4-173
Buildings or land used for prostitution, gambling or narcotic drug transactions, abatement as nuisance, 94-1002
Sanitary deficiencies in public buildings as nuisance, 69-4118

NURSES
Child abuse reports required, 10-901 to 10-905—See CHILDREN AND MINORS, Abuse of children
License to practice nursing
endorsement without examination of licensee of another state, 66-1228
fees
disposition of fees, 66-1237
endorsement without examination, 66-1229
practical nurse license, 66-1234
renewal fee, 66-1236
lapse of license by failure to renew, 66-1236
renewal of license, fee, 66-1236

References are to Title and Section numbers

NURSES (Continued)
Moneys received by board, disposition, 66-1237
Visiting nurses, employment by local boards, 69-4512

NURSING HOMES
Center for the aged, 80-2501 to 80-2503—See CENTER FOR THE AGED
County operation of home, 16-1037
  services provided at county-operated home, 16-1038
Fire regulations applicable, 69-1802
Joint county institutions authorized, 16-1040
  definition of terms, 16-1039
  terms of contract between counties, 16-1041
Lease of county property for home, 16-1036
Long-term care facilities, 69-5201 to 69-5221—See LONG-TERM CARE FACILITIES
Tax exemption when operated not for profit, 84-202

O

OBSCENE CONDUCT
Telephone, harassment by unlawful, penalty, 94-35-221.5, 94-35-221.6

OCCUPATIONAL DISEASE ACT
Administration of act, 92-1302
Aggravation of occupational disease by other disease, 92-1326
Agreement by employee to waive compensation void, 92-1330
American experience table of mortality, use, 92-1349
Appeals under—See Judicial review, below
Asbestosis included as compensable disease, 92-1304
Attachment, compensation exempt from, 92-1329
Attorney general, duties, 92-1343
Attorney's compensation, 92-1323
Autopsy, 92-1318
  expenses, 92-1320
Benefits
  burial expenses, 92-1324
  compensation payable under act same as under workmen's compensation act, 92-1321
Books, records and payrolls of employers to be open for inspection, 92-1358
Burial expenses, 92-1324
Claims
  filing, 92-1312
  forms, 92-1346
  time for presenting, 92-1312
Collateral attack on orders or decisions of board prohibited, 92-1361
Common law defenses not available, 92-1339
Common law right of action prohibited against employer electing to come under act, exceptions, 92-1331
Compensation
  amount of benefits and time period, same as workmen's compensation act, 92-1321
  assignment, limitation, 92-1329
  date for beginning of payment of compensation under act, 92-1338
  determination of amount of compensation and time and method of payment, 92-1336
  diminution because of payments under workmen's compensation act, 92-1333
  exceptions, 92-1311
  exemption from attachment, garnishment and execution, 92-1329
  false representation by employee as preventing, when, 92-1342
  liability of employer for, 92-1366
  limitations, 92-1311
  methods for employers to secure compensation to their employees, 92-1334
  partial disability, no compensation for, 92-1322
  payment, 92-1311

References are to Title and Section numbers

OCCUPATIONAL DISEASE ACT (Continued)
Compensation (Continued)
payments due to child under 18 years of age or incompetent, 92-1337
persons receiving public welfare benefits not entitled to compensation, 92-1332
vested rights in prohibited, 92-1367
wilful misconduct, self-exposure or disobedience of orders of board as precluding, 92-1328
Compensation plans, 92-1334
Construction of act, 92-1368
Costs and disbursements in proceedings and hearings, 92-1357
Death
autopsy, 92-1318
expenses, 92-1320
burial expenses, 92-1324
disease other than silicosis as cause, report of member of medical committee, 92-1317
notice of, 92-1313
silicosis as cause of death, report of pulmonary specialist, 92-1316
Deduction from wages of part of premium constitutes misdemeanor, 92-1341
Defenses not available to employer, 92-1339
Definitions, 92-1303
Depositions, power to take, 92-1351
Diseases which constitute occupational diseases, enumeration, 92-1304
District court, powers concerning enforcement of production of testimony, 92-1355
Employees
agreement to waive compensation or pay premium void, 92-1330
applicants for employment who upon medical examination are found afflicted with occupational disease, employer not liable, when, 92-1330
right of employee to reject provisions of act, notice of, posting, 92-1309
Employers
books, records and payrolls to be open to inspection, 92-1358
compensation plan No. 1, direct payment to employee, 92-1334
compensation plan No. 2, insuring liability, 92-1334
compensation plan No. 3, occupational disease compensation account, 92-1334
deducting from wages part of premium, misdemeanor, 92-1341
liability for payment of compensation, 92-1366
liability where person employed by successive employers, exception, 92-1310
Evidence, certificate and certified copies as, 92-1356
Execution, compensation exempt from, 92-1329
Execution of process, fees, 92-1353
Expenses, 92-1357
False representation by employee as to prior diseases, effect, 92-1342
Garnishment, compensation exempt from, 92-1329
Hearings after receipt of notice and medical report, 92-1315
Hearings and investigations, conduct of, 92-1350
Hearings, findings and awards by board, 92-1335
Industrial accident board
administering oath, certifying official acts, issuing subpoenas, etc., power, 92-1354
administration of act, 92-1302
claim forms, prescribing, 92-1346
collateral attack on orders or decisions of prohibited, 92-1361
determination of amount of compensation and method and time of payment, 92-1336
hearings, findings and awards by, 92-1335
issuance of writs and process, power, 92-1353
jurisdiction to hear disputes and controversies, 92-1359
members not to receive additional compensation for administering act, 92-1302
powers necessary and convenient, authority concerning, 92-1352
power to administer oath, issue subpoenas, compel attendance of witnesses, etc., 92-1347
presumption as to legality of rules, orders, findings, etc., 92-1360
right to sue and be sued, 92-1344
rules and regulations, adoption, 92-1345
service of process on, 92-1344
traveling expenses, 92-1302
Information furnished to board confidential, 92-1348

OCCUPATIONAL DISEASE ACT (Continued)
Judicial review
appeal to district court
appearance, 92-1364
method of taking, 92-1362, 92-1363
time for, 92-1362
appeal to supreme court, 92-1365
collateral attack upon orders and decisions of board prohibited, 92-1361
jurisdiction of board to hear disputes and controversies, 92-1359
Lump sum settlements
exception as to amount of attorney's compensation, 92-1323
prohibition against, 92-1323
Medical and hospital expenses, 92-1325
Medical examination
cost, payment, 92-1320
periodic medical examination, 92-1319
procedure, 92-1315
re-examination, 92-1315
report, 92-1315
Medical panel
appointment, 92-1314
composition, 92-1314
medical association, certifying nominees, 92-1314
Notice of disability or death, time for giving, 92-1313
Notice of employee's right to reject provisions of act, posting of, 92-1309
Occupational disease compensation account, 92-1334
Occupational diseases
aggravation by other disease, 92-1326
arising out of employment, when, 92-1305
enumeration, 92-1304
Partial disability, no compensation for, 92-1322
Payments due to child under 18 or to person adjudged incompetent, method of making, 92-1337
Periodic medical examinations, 92-1319
Persons receiving benefits under public welfare act not entitled to compensation benefits, 92-1332
Persons subject to act, 92-1307
Preventive measures, 69-4201 to 69-4205—See INDUSTRIAL HYGIENE
Radiation sickness, time for filing notice of claim, 92-1311, 92-1313
Regular employees, 92-1306
Rights to compensation under act exclusive remedy, when, 92-1308
Short title, 92-1301
Silicosis as cause of death, report of pulmonary specialist, 92-1316
Silicosis with complication of tuberculosis, 92-1327
Subcontractors, 92-1306
Successive employers, 92-1310
Violation of act, penalties, 92-1340
Wilful misconduct, wilful self-exposure or disobedience precludes compensation, 92-1328
Witnesses before board, fees and mileage, 92-1354

OIL AND GAS
Assessments against operators and producers, disposition of moneys, 60-145
Earmarked revenue fund, deposits and use of fund, 60-145
Federal lands, royalties used for school equalization aid, 75-3613
Lien on well, priority and filing of statement, 45-1003
Petroleum field station at Billings, transfer to commission, 60-147
Real estate brokers' license act inapplicable to dealings in mineral interest, 66-1926
Review of orders of conservation commission, application of rules of civil procedure, M. R. Civ. P., Rule 81(a), Table A

OPERATORS' AND CHAUFFEURS' LICENSES
Agents for issuance of licenses, 31-135

References are to Title and Section numbers

OPERATORS' AND CHAUFFEURS' LICENSES (Continued)
Driver education courses, 75-5301 to 75-5309—See SCHOOLS, Driver education program
issuance of license after completion of course, 31-127
Driving under influence, mandatory suspension or revocation, 31-149
Expiration date of license, 31-135
Fee payable for license, 31-135
Forfeiture of bail on motor vehicle offense, return of license to board, 31-145
revocation of license, 31-146
Interstate compact, text and enactment, 31-163
governor designated as executive head, 31-166
highway patrol board designated as licensing authority, 31-164
judicial review of actions pursuant to compact, 31-169
offenses furnishing grounds for suspension or revocation of license, 31-168
reimbursement of compact administrator, 31-165
report to highway patrol of suspension or revocation of license, 31-167
Issuance of license, 31-135
Person holding chauffeur's license not to have operator's license, 31-125
Photograph to be included in license, 31-135
Possession of more than one license prohibited, 31-135
Probationary licenses, issuance, 31-147
Provisional license, designation and suspension, 31-135
Revocation or suspension, child under 18 unlawfully operating motor vehicle, 32-21-163
Surrender of foreign license on licensing in Montana, 31-125
Testing of applicants for renewal, 31-135

OPTOMETRY
Annual report of board of examiners, 66-1311
Attorney general to represent board in supreme court, 66-1315
Compensation of examiners, 66-1311
Corporations for practice, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Disability insurance, freedom of choosing physician, 40-4108, 40-4109
Fee for renewal of registration, 66-1307
Public agencies, acceptance of services of licensed optometrist, 66-1317
Renewal of registration, 66-1307
Violations
injunction on relation of board of examiners, 66-1302
penalty for, 66-1314
prosecution of, 66-1315

ORDERS
Application for order to be by motion, M. R. Civ. P., Rule 7(b)
Exceptions to orders of court unnecessary, M. R. Civ. P., Rule 46
Mistaken order, grounds and procedure for relief from, M. R. Civ. P., Rule 60
Pre-trial conference, order issued after, M. R. Civ. P., Rule 16
Process used for enforcement for and against persons not parties, M. R. Civ. P., Rule 71
Service on parties, when required, M. R. Civ. P., Rule 5(a)

OSTEOPATHY
Compensation of board members, 66-1410
Corporations for practice, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Disability insurance, freedom of choosing physician under disability insurance, 40-4108, 40-4109
Fees received by board, deposit and use, 66-1410
License, issuance after examination, 66-1405
Report by board to governor, 66-1410

OUTDOOR RECREATIONAL RESOURCES
Advisory and planning committee, composition and functions, 62-404
Fish and game commission as agent to implement federal act, 62-402
powers of commission, 62-403
Purpose of act, 62-401

PAINTS AND PAINT PRODUCTS
Analysis, 3-1514
Contents of label, 3-1510
County attorney, duties, 3-1515
Enforcement of regulatory act, 3-1513
Intrastate transactions, application of act, 3-1510
Labeling requirements, 3-1510
Laboratory for analysis, 3-1514
Penalty for violations, 3-1511
Possession of improperly labeled products as prima facie evidence, 3-1512

PARKING FACILITIES
Off-street parking facilities in cities
improvement districts, authority to create, 11-2201
assessments and bonds, 11-2214.2
bonds, authority of district to issue, 11-2214.1
leasing of real property, 11-2214.4
payment of assessments, 11-2214.3
resolution of intention, publication and adoption, 11-2214.5

PARKS
Counties
board of park commissioners
acceptance of federal aid, 16-4807
accounts and records, 16-4801
commissioners, qualifications and terms, 16-4801, 16-4804
compensation of commissioners, 16-4804
execution of contracts, 16-4804
failure of commissioner to attend meetings, vacancy in office, 16-4804
funds, receipt and disbursement, 16-4803
auditing and allowance of claims, 16-4805
interest of commissioner in contracts of board prohibited, 16-4804
meetings, 16-4801, 16-4804
minute book, record of proceedings, 16-4801
notice of special meetings, 16-4804
officers of the board, duties, 16-4801
powers and duties of board, 16-4802
quorum for the transaction of business, 16-4804
vacancies on board, filling of, 16-4804
claims against county, allowance, 16-4805
county land donated for park purposes, 16-1131
discrimination in employment prohibited, 16-4806
federal aid, conditions, 16-4807
park fund, separate fund in county treasury, 16-4803
restricted liability for expenditures, 16-4803
Gasoline tax moneys allocated for park improvement, 32-2601
Outdoor recreational resources, development, 62-401 to 62-404—See OUTDOOR RECREATIONAL RESOURCES
State parks
fees and charges, disposition and use, 62-305
fish and game commission vested with control, 62-301
powers and duties enumerated, 62-304
injury to park property, penalty, 62-314
scientific and recreational park, establishment authorized, 62-310
rules and regulations, 62-311
violation of rules and regulations, penalty, 62-314

PARTIES
Administrators need not join beneficiaries as parties, M. R. Civ. P., Rule 17(a)
Assignee of claim as plaintiff, defenses available against, 93-2802
Capacity to sue or be sued determined by statute, M. R. Civ. P., Rule 17(b)
Class actions, M. R. Civ. P., Rule 23(a)

PARTIES (Continued)
Counterclaim requiring addition of parties, M. R. Civ. P., Rule 13(h)
Cross-claim requiring addition of parties, M. R. Civ. P., Rule 13(h)
Death of party, substitution of representative, M. R. Civ. P., Rule 25(a)
Executor need not join beneficiaries as parties, M. R. Civ. P., Rule 17(a)
Guardians need not join wards as parties, M. R. Civ. P., Rule 17(a)
Incompetent persons, representation in actions, M. R. Civ. P., Rule 17(c)
  substitution of guardian in pending action, M. R. Civ. P., Rule 25(b)
Interpleader by joinder or substitution, M. R. Civ. P., Rule 22
Interrogatories to parties, M. R. Civ. P., Rule 33
Intervention, M. R. Civ. P., Rule 24
Joinder of parties
  form for allegation of reason for omission of necessary party, M. R. Civ. P., Appendix of Forms, Form 22
  interpleader, M. R. Civ. P., Rule 22(a)
  misjoinder, effect and correction, M. R. Civ. P., Rule 21
  nonjoinder, effect and correction, M. R. Civ. P., Rule 21
  permissive joinder, M. R. Civ. P., Rule 20(a)
  required joinder, effect of failure to join, M. R. Civ. P., Rule 19
  separation of trials, M. R. Civ. P., Rule 20(b)
Minors, representation in actions, M. R. Civ. P., Rule 17(c)
Mortgage foreclosure, necessary parties to, 93-6001
Motion on failure to join indispensable party, M. R. Civ. P., Rule 12(b)
Part of defendants served, proceeding against, M. R. Civ. P., Rule 4 D(10)
Physical and mental examinations, compelling submission, M. R. Civ. P., Rule 35
Public officers, substitution of successor, M. R. Civ. P., Rule 25(d)
Real party in interest, action to be prosecuted in name of, M. R. Civ. P., Rule 17(a)
State bringing action for use or benefit of another, M. R. Civ. P., Rule 17(a)
Substitution of parties, M. R. Civ. P., Rule 25
  interpleader, substitution by, M. R. Civ. P., Rule 22(b)
Third-party practice, M. R. Civ. P., Rule 14
Transfer of interest, substitution of successor, M. R. Civ. P., Rule 25(c)
Trustee need not join beneficiaries as parties, M. R. Civ. P., Rule 17(a)
Unauthorized insurers, actions by prohibited, 40-3402

PARTITION
Personal property
  county in which action to be brought, 93-6301.1
  partition or sale authorized, 93-6301.1
  procedure, 93-6301.2
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A

PARTNERSHIPS
Execution against partnership interest, 93-5811
Service of process on partnerships, M. R. Civ. P., Rule 4 D(2)

PAWNBROKERS AND JUNK DEALERS
Secured transactions, application of law to, 87A-9-203

PAYMENT
Affirmative defense, M. R. Civ. P., Rule 8(c)

PEACE OFFICERS
Arrests, 95-608—See ARRESTS, Peace officer
Criminal investigator, position within office of attorney general, 82-414 to 82-420—See CRIMINAL INVESTIGATOR
Definition, Code of Criminal Procedure, 95-210
Fish and game laws, enforcement by officers, 26-114
Law enforcement academy, 75-5201 to 75-5208—See COLLEGES AND UNIVERSITIES, Law enforcement academy
Qualifications of, 16-3705
Reports of accidents investigated, 32-1208
Roadblocks, arrests at, 95-618
Teletypewriter communications system, 82-3901 to 82-3906—See LAW ENFORCEMENT TELETYPEWRITER COMMUNICATIONS

References are to Title and Section numbers

PERISHABLE PROPERTY
Carrier may sell, when, 8-819

PETROLEUM PRODUCTS
Adulterated or misbranded products, sale prohibited, 60-205
Calibration of tanks and measuring devices, 60-229
liquefied petroleum dispensing devices, 60-230
temperature correction required, 60-231
penalty for violations of act, 60-233
rules and regulations of state sealer, 60-232
standards promulgated by state sealer, 60-232
"Commissioner" defined, 60-203.1
Dealer's license required to do business, 60-224
application for license, 60-224
definition of terms, 60-223
delinquent renewal fee, 60-228
expiration and renewal of licenses, 60-228
meter license fees, 60-227
penalty for unlicensed operation, 60-233
place of business license fee, 60-225
pump license fees, 60-226
rules and regulations for enforcement, 60-232
sealing of equipment where fee not paid, 60-228
seizure and confiscation of property of unlicensed dealer, 60-224
tank license fees, 60-228
Enforcement of chapter by commissioner of agriculture, 60-203.2
Inspections and tests by commissioner, 60-211
obstruction of entry or inspection prohibited, 60-217
samples furnished by dealers, 60-212
samples furnished by users, 60-217
Rules and regulations for interpretation of chapter, 60-203.2
state sealer to regulate dealers, tanks and measuring devices, 60-232
Standards of quality, strength and purity, determination and promulgation by commissioner, 60-203.3
Substandard products, sale prohibited, 60-205

PHARMACIES
Alcoholic beverages, possession and sale by druggist, 4-134
State board of pharmacy
fees and fines received by board, deposit and use, 66-1527
review of orders, application of rules of civil procedure, M. R. Civ. P., Rule 81(a) Table A

PHOTOGRAPHY
License fund abolished, 79-416

PHYSICAL THERAPY
Application for examination, contents and filing, 66-2503
Certificate, issuance to licensed therapist, 66-2507
Citation of practice act, 66-2517
Definition of terms used in practice act, 66-2501
Examination of applicants for license
application for examination, 66-2503
conduct of examination, 66-2506
fee for examination, 66-2503
repeat examination after failure to pass, 66-2503
scope of examination, 66-2506
Exemption from practice act for other professions, 66-2513
Expiration and extension of licenses, 66-2508
Investigation and report of violations, 66-2515
Licensed therapist from other states, licensing, 66-2505
List of licensed therapists, publication and distribution, 66-2514
Oath or fraudulent representation to obtain license, misdemeanor, 66-2512
Penalties for violations, 66-2516

References are to Title and Section numbers

PHYSICAL THERAPY (Continued)
Practice of medical profession by therapist not authorized, 66-2513
Previously practicing therapists, licensing, 66-2504
Qualifications of licensees to practice, 66-2502
Refusal to issue or renew license, grounds, 66-2509
Register of licensed persons kept by board, 66-2514
Rules to carry practice act into effect, adoption by board, 66-2514
Temporary licenses, issuance and duration, 66-2510
Unauthorized representation as licensed therapist, misdemeanor, 66-2511

PHYSICIANS AND SURGEONS
Alcoholic beverages, prescription and administration by physician, 4-136
Annual registration fee, disposition, 66-1008
Appeal from board, application of rules of civil procedure, M. R. Civ. P., Rule 81(a), Table A
Autopsies ordered by coroner, liability of physician limited, 95-813
Child abuse reports, 10-901 to 10-905—See CHILDREN AND MINORS, Abuse of children
Compensation of members of board of examiners, 66-1009
Corporations for practice, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Disability insurance, freedom of choosing physician, 40-4108, 40-4109
Emergency care at scene of accident, restriction on liability for, 17-410
Employment of personnel by board of examiners, 66-1009
Occupational disease reports, contents and filing, 69-4204
Optometry regulatory act not applicable to, 66-1316
Report of board of examiners, 66-1009
Venereal disease report required, 69-4604
exposure of other persons to be reported, 69-4607

PINE HILLS SCHOOL
See STATE INSTITUTIONS, Juvenile facilities, 80-2202 et seq.

PIPELINES
Attorney general to enforce provisions of act, 8-202
Common carriers defined, 8-201
Connections and interchange facilities, power of board to require, 8-205
Discrimination prohibited, 8-207, 8-210
Financing statements of utility, contents and place of filing, 87A-9-302.2
definition of terms, 87A-9-302.1
Uniform Commercial Code, application, 87A-9-302.3
Investigatory powers of board, 8-206
Irrigation and drainage pipelines, taxability, 84-206
Lien on pipeline, priority and filing of statement, 45-1003
Public utility, status of pipelines as, 8-202
Rate regulation
discrimination prohibited, 8-207
hearings and complaints, 8-204
publication of tariffs, 8-206
Records of carriers, investigation by board, 8-206
Reports required of carriers, 8-206

PLANNING AND ECONOMIC DEVELOPMENT
Administrators of sections of department, appointment of personnel, 82-3707
Annual report by commission, 82-3708
Citation of act, 82-3701
Commission, 82-3703
expenses of members, 82-3703
members of commission, 82-3703
terms of members, 82-3703
vice-chairman, secretary, and other officers, 82-3703
Contracts and agreements for projects and programs, 82-3706
Co-operation with other agencies, 82-3706

References are to Title and Section numbers

PLANNING AND ECONOMIC DEVELOPMENT (Continued)
Department of planning and economic development, 82-3703
executive head of department, appointment, compensation, 82-3704
functions of department, 82-3705
Necessity and public policy, declaration of, 82-3702
Planning board abolished, transfer of records, property and moneys, 82-3709

PLANNING AND ZONING
Act not to prevent recovery and use of mineral, forest or agricultural resources, 11-3853
Appropriations for expenses of planning board, 11-3825
City-county board
advisory function, 11-3801
apportionment of expenses between governmental units, 11-3825
budget of board, 11-3824
composition of board, 11-3810
jurisdictional area, definition and establishment, 11-3830
projects outside area, power to plan, 11-3830.1
zoning districts within jurisdictional area, 16-4703
powers of board, 11-3824
property, power to accept, hold and use, 11-3827
purpose of creation, 11-3801
qualifications of citizen members, 11-3812
quorum of board, 11-3818
recommendations to county commissioners, 16-4702
removal of citizen member from office, 11-3813
reports of board, 11-3824
terms of office of members, 11-3810
travel expenses to attend regional or national conferences, 11-3820
zoning commission, board functioning as, 11-3828
county zoning commission, acting as, 16-4702
City planning board
advisory function, 11-3801
composition, 11-3804
property, power to accept, hold and use, 11-3827
purpose of creation, 11-3801
qualifications of citizen members, 11-3808
County zoning districts
actions to enforce zoning regulations, 16-4707
adoption of resolution creating district and establishing regulations, 16-4705
board of adjustment, establishment, powers, and procedure, 16-4706
comprehensive development plan to be used, 16-4704
continuation of nonconforming uses, 16-4709
enforcing officers, appointment and powers, 16-4708
establishment of districts authorized, 16-4703
factors considered in making regulation, 16-4704
hearings on proposed district and regulations, 16-4705
judicial review of actions by board of adjustment, 16-4706
natural resources to be protected, 16-4710
permits for location or conformance, issuance and fees, 16-4708
power of commissioners to adopt regulation, 16-4701
procedure for adoption of regulations and boundaries, 16-4705
property, power of board to accept, hold and use, 11-3827
publication of intention to create district, 16-4705
purpose of act, 16-4701
recommendations by city-county planning board, 16-4702
resolution of intention to create district, 16-4705
uniformity of regulation within district, 16-4703
uses regulated within district, 16-4703
violations of act or resolution, penalty, 16-4707
Definition of terms in planning board law, 11-3803
Industrial development projects, 11-4101 to 11-4110—See INDUSTRIAL DEVELOPMENT
Master plan
adoption of plan by governing bodies, 11-3840
adoption of plan by planning board, 11-3834

PLANNING AND ZONING (Continued)
Master plan (Continued)
contents of plan, 11-3831
definition, 11-3803
governing bodies' action on plan, 11-3840
hearing prior to adoption of plan, 11-3833
policies to be embodied in plan, 11-3828
Ordinances and resolutions
recommendations of planning board to governing bodies, 11-3834
subdivision plats, requiring conformity to master plan, 11-3842
validation of prior actions, 11-3855
Planning districts, creation by county commissioners authorized, 11-3825
Subdivision plats
application for approval for plat, 11-3843
conformity to master plan, ordinance requiring, 11-3842
factors considered by planning board in acting on application, 11-3844
fees payable with application, 11-3847
filing and recording of plat ineffective unless approved by city council, 11-3848
hearing by planning board, 11-3843
judicial review of city council action, 11-3851
procedural regulations of planning board, 11-3845
recommendations of planning board for approval or disapproval, 11-3846
Submission of urban renewal plan to commission, 11-3906
Tax levy for planning board purposes, 11-3825
Validation of prior ordinances, rules and regulations, 11-3855

PLANNING BOARD, STATE
State planning board abolished, transfer of records, property and moneys to planning and economic development commission, 82-3709

PLEADINGS
Accord and satisfaction as affirmative defense, M. R. Civ. P., Rule 8(c)
Adoption by reference, M. R. Civ. P., Rule 10(c)
Affirmative defenses, setting forth in pleadings, M. R. Civ. P., Rule 8(c)
Alternative pleadings permitted, M. R. Civ. P., Rule 8(e)
Ambiguity, motion for more definite statement, M. R. Civ. P., Rule 12(e)
Amendments of pleadings, M. R. Civ. P., Rule 15
Appearance, filing of answer constituting, 93-8505
Arbitration and award as affirmative defense, M. R. Civ. P., Rule 8(c)
Assumption of risk as affirmative defense, M. R. Civ. P., Rule 8(c)
Capacity to sue or be sued, absence raised by negative pleadings, M. R. Civ. P., Rule 9(a)
Caption, content, M. R. Civ. P., Rule 10(a)
Claims for relief, contents, M. R. Civ. P., Rule 8(a)
Conciseness required, M. R. Civ. P., Rule 8(e)
Conditions precedent, general averment of performance permitted, M. R. Civ. P., Rule 9(c)
Consideration, failure as affirmative defense, M. R. Civ. P., Rule 8(c)
Contributory negligence as affirmative defense, M. R. Civ. P., Rule 8(c)
Counterclaims, M. R. Civ. P., Rule 13(a) to (f)
Criminal cases—See CRIMINAL PROCEDURE
arraignment of defendant, 95-1601 to 95-1608
charging an offense, 95-1501 to 95-1506
guilty plea, when accepted, 95-1902
justices' courts and police courts, 95-2004
pretrial motions, 95-1701 to 95-1710
Cross-claims, M. R. Civ. P., Rule 13(g)
Damages, specific statement of special damage required, M. R. Civ. P., Rule 9(g)
Defenses, form of stating, M. R. Civ. P., Rule 8(c)
Defenses required to be made by responsive pleadings, M. R. Civ. P., Rule 12(b)
Demurrers abolished in civil proceedings, M. R. Civ. P., Rule 7(c)
Denials, form of stating, M. R. Civ. P., Rule 8(b)
Directness required, M. R. Civ. P., Rule 8(e)
Discharge in bankruptcy as affirmative defense, M. R. Civ. P., Rule 8(c)

PLEADINGS (Continued)
Duress as affirmative defense, M. R. Civ. P., Rule 8(c)
Enumeration of pleadings allowed in civil cases, M. R. Civ. P., Rule 7(a)
Estoppel as affirmative defense, M. R. Civ. P., Rule 8(c)
Exceptions for insufficiency abolished in civil proceedings, M. R. Civ. P., Rule 7(c)
Exhibits as parts of pleading, M. R. Civ. P., Rule 10(c)
Failure to deny, effect, M. R. Civ. P., Rule 8(d)
Fellow servant rule as affirmative defense, M. R. Civ. P., Rule 8(c)
Filing with court required, M. R. Civ. P., Rule 5(d)
Form of pleading, M. R. Civ. P., Rule 10
Forms suggested by rules, M. R. Civ. P., Appendix of Forms, Forms 2 to 14, 16, 17
Fraud as affirmative defense, M. R. Civ. P., Rule 8(c)
  circumstances to be stated with particularity, M. R. Civ. P., Rule 9(b)
General denial permitted, M. R. Civ. P., Rule 8(b)
Illegality as affirmative defense, M. R. Civ. P., Rule 8(c)
Inconsistent pleadings permitted, M. R. Civ. P., Rule 8(e)
Intent, general averment permitted, M. R. Civ. P., Rule 9(b)
Judgment on pleadings, motion for, M. R. Civ. P., Rule 12(c)
Judgments, manner of pleading, M. R. Civ. P., Rule 9(e)
Justices' courts, 93-6802.1, 93-6802.2
Knowledge, general averment permitted, M. R. Civ. P., Rule 9(b)
Laches as affirmative defense, M. R. Civ. P., Rule 8(c)
License as affirmative defense, M. R. Civ. P., Rule 8(c)
Malice, general averment permitted, M. R. Civ. P., Rule 9(b)
Mistake as defense, circumstances to be stated with particularity, M. R. Civ. P., Rule 9(b)
Names of parties, when included, M. R. Civ. P., Rule 10(a)
Official documents or acts, averment as to compliance with law, M. R. Civ. P., Rule 9(d)
Ordinances, manner of pleading, M. R. Civ. P., Rule 9(d)
Paragraphing and numbering, M. R. Civ. P., Rule 10(b)
Payment as affirmative defense, M. R. Civ. P., Rule 8(c)
Place, materiality of averments as to, M. R. Civ. P., Rule 9(f)
Pre-trial conference, consideration in, M. R. Civ. P., Rule 16
Regulations, manner of pleading, M. R. Civ. P., Rule 9(d)
Release as affirmative defense, M. R. Civ. P., Rule 8(c)
Res judicata as affirmative defense, M. R. Civ. P., Rule 8(c)
Separation of claims and defenses, M. R. Civ. P., Rule 10(b)
Service on parties, when required, M. R. Civ. P., Rule 5(a)
Signature by attorney, M. R. Civ. P., Rule 11
Special damage, specific statement of items required, M. R. Civ. P., Rule 9(g)
Statute of frauds as affirmative defense, M. R. Civ. P., Rule 8(c)
Statute of limitations as affirmative defense, M. R. Civ. P., Rule 8(c)
Statutes, manner of pleading, M. R. Civ. P., Rule 9(d)
Striking pleadings or matter therein, motion for, M. R. Civ. P., Rule 12(f)
Substantial justice, pleadings construed to effect, M. R. Civ. P., Rule 8(f)
Supplemental pleadings, M. R. Civ. P., Rule 15(d)
Third-party practice, M. R. Civ. P., Rule 14
Time allowed for responsive pleadings, M. R. Civ. P., Rule 12(a)
Time, materiality of averments as to, M. R. Civ. P., Rule 9(f)
Variance of proof, amendment of pleadings, M. R. Civ. P., Rule 15(b)
Verification of pleading, form and persons by whom made, 93-3702
Waiver as affirmative defense, M. R. Civ. P., Rule 8(c)
Waiver of defenses by failure to plead, M. R. Civ. P., Rule 12(h)

PLEDGES
  See SECURED TRANSACTIONS, 87A-9-101 to 87A-9-507
Definition of term, 19-103

PLUMBERS
Act not to require employment of licensed plumbers, 66-2415
Board of plumbing examiners
  appointment of members, 66-2403
  duties, 66-2403

References are to Title and Section numbers

PLUMBERS (Continued)
Board of plumbing examiners (Continued)
members, 66-2403
term of members, 66-2403
Declaration of public interest, 66-2412
Fee on fixtures installed by plumbers, 66-2427
Licensing
bond required of master plumber, 66-2405
examination of licensees, 66-2402
experience required of licensees, 66-2402
fees received for licenses, deposit and use, 66-2407
required when working in city or town unless excused by governing body, 66-2401
Minimum standards
exceptions from act, 66-2426
inferior installations, restraining, 66-2417
municipal ordinances, power to adopt rules and regulations, 66-2424
prescribing, 66-2416
revocation or suspension of license for work below minimum, 66-2419
hearing, 66-2422
initiation, 66-2420
judicial review, 66-2423
procedure, 66-2420
process, service, 66-2421
state plumbing code, adoption, 66-2416
effective date, 66-2425
State plumbing board
board of plumbing examiners constitutes, 66-2413
chairman, 66-2414
employees, 66-2414
rules and regulations, 66-2414

POISONS
Insecticides, fungicides and rodenticides, definitions, 27-202
Warranty accompanying manufacture or sale of economic poison, 27-203

POLICE COURTS
Criminal cases, proceedings, 95-2001 to 95-2009—See CRIMINAL PROCEDURE, Police courts
Criminal jurisdiction, 95-303
Disqualification of judge, requirements and procedure, 95-1709
Fines for city ordinance violations tried on appeal, disposition of, 95-2008.1
Judges, salaries, 11-726

POST-ENEMY-ATTACK PROVISIONS
Continuity in government, V, 46; 82-3801 to 82-3809—See WAR, Continuity in government
Resource management, 77-1501 to 77-1508—See WAR, Resource management

POTATOES
Grading of potatoes, 3-1404

POULTRY
Advisory board, appointment, 3-2201
members serve without compensation, 3-2203
Breeding plan of accreditation and certification, 3-2204
Cancellation of certificates of accreditation or certification, 3-2211
Cancellation or refusal of license, procedure required, 3-2204
Definitions of terms, 3-2202
Fees collected, disposition, 3-2207
Improvement board abolished, 3-2201.1
Inspection plans, formulation, 3-2204
Labeling of products required, 3-2209
License required for hatchery, 3-2205

POULTRY (Continued)
Powers and duties of commissioner of agriculture, 3-2201
Sale by weight required, 90-613
Violations of law as misdemeanor, 3-2212

POVERTY RELIEF
See PUBLIC WELFARE, Economic opportunity and poverty relief, 71-1601 to 71-1604

PRELIMINARY EXAMINATION
See CRIMINAL PROCEDURE, Preliminary examination, 95-1201 to 95-1204

PRESUMPTION
Legality of rules, orders, findings, etc., of industrial accident board under occupational disease act, 92-1360

PRETRIAL CONFERENCE
Conduct and scope of conference, M. R. Civ. P., Rule 16

PRETRIAL MOTIONS
Criminal procedure, 95-1701 to 95-1710—See CRIMINAL PROCEDURE, Pretrial motions

PRINCIPAL AND INCOME ACT
Act to govern ascertainment of principal and income and apportionment of receipts and expenses, 67-1902
Animals, offspring of, 67-1908
Application to estates created after effective date, 67-1916
Bonds or obligations, 67-1906
Business, operation of, 67-1907
Coverage of act, 67-1902
Death of tenant between payment dates, apportionment, 67-1904
Definitions, 67-1901
Delayed income, 67-1911
Depletion of property, 67-1910
Expenses
  apportionment, 67-1912
  expenses where no trust created, 67-1913
  improvement, 67-1913
Income
  corporate dividends, when, 67-1905
  definition, 67-1901
  receipts constitute, 67-1903
Interpretation of act, uniformity, 67-1914
Natural resources, 67-1909
Net profits derived from operation of business, 67-1907
Offspring of animals, 67-1908
Principal
  change in form of investment of unprofitable principals, 67-1911
  corporate dividends, when, 67-1905
  definition, 67-1901
  loss or gain on sale of bonds or obligations, 67-1906
  property subject to depletion, 67-1910
  receipts constitute, 67-1903
"Remainderman" defined, 67-1901
Severance of natural resources, 67-1909
Short title of act, 67-1915
Stock dividends, 67-1905
"Tenant" defined, 67-1901
"Trustee" defined, 67-1901
Uniform principal and income act, 67-1915

References are to Title and Section numbers

PRINTING

County printing, 16-1225 to 16-1233—See COUNTIES, Printing
State printing
- certification of printer as to prices and rates, 82-1152
- penalty for violations of act, 82-1138
- preference to Montana printers, 82-1137
- union label required, exceptions, 82-1137
- wages and working conditions required of contractors, 82-1137

PRISONS AND PRISONERS

Escape from prison, venue of prosecution, 95-409
Inmates of state prison, use of state correspondence school, 75-2006
Interstate agreement on detainers, text and enactment, 94-1101-1
- cooperation of public agencies in enforcement, 94-1101-3
- coordinator of agreement, appointment and duties, 94-1101-6
- delivery of prisoner by institution on detainer, 94-1101-5
- district courts to function under agreement, 94-1101-2
- escape from custody on detainer, penalty, 94-1101-4

Medical expense for jail prisoners, reimbursement of sheriff, 16-2818
Post-conviction hearing, 95-2601 to 95-2608—See CRIMINAL PROCEDURE, Post-conviction hearing
Review of legal sentences, review division of supreme court, 95-2501 to 95-2504
Sentence and judgment, 95-2201 to 95-2216; 95-2301 to 95-2312—See CRIMINAL PROCEDURE, Sentence and judgment
State prison
- contracts for confinement of inmates in other institutions, 80-1907
- criminal identification bureau, 80-2001 to 80-2006—See BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION
- death of prisoner, payment of inquest costs, 16-3410
- discharge of prisoner, clothing and money furnished, 80-1906
- good time allowance for inmates, 80-1905
- hours of work for employees of prison, 80-1903
- industrial activities permitted, 80-1501 to 80-1503—See STATE INSTITUTIONS, Industrial activities permitted
- location of prison, 80-1901
- management and control of prison, 80-1401 to 80-1409—See STATE INSTITUTIONS, Department of institutions
- punishment of inmates, restrictions on, 80-1904
- purpose of prison, 80-1901
- state hospital, commitment of prisoner to, 80-1908
- transfer of prisoners under 21 to department of institutions, 80-2210
- warden, qualifications, 80-1902
- weapons, possession by prisoner, penalty, 94-3527.1

Venereal disease, examination and treatment of prisoners for, 69-4606
Western Interstate Corrections Compact, 95-2308 to 95-2312
Work release program, 95-2216

PRIVACY RIGHTS

Recording of conversation without knowledge of parties as misdemeanor, 94-35-274
- exemptions from general prohibition, 94-35-275

PRIVIES

Cleaning of privies, 69-5401 to 69-5408—See SANITARY LICENSEES

PROBATE PROCEEDINGS

Discovery procedures applicable, M. R. Civ. P., Rule 1
Rules of civil procedure, application to probate proceedings, M. R. Civ. P., Rule 81(a), Table A

PROBATION, PAROLE AND CLEMENCY

Board of pardons
- court to transmit statistical data following sentence and judgment, 95-2210
- expenses of board, payment and reimbursement, 94-9826
- officers and employees of board, employment and compensation, 94-9825

PROBATION, PAROLE AND CLEMENCY (Continued)
Criminal procedure, sentence and judgment, 95-2201 to 95-2216—See CRIMINAL PROCEDURE, Sentence and judgment
Director, appointment and compensation, 94-9825
Industrial school inmates, release on parole, 80-820
Vocational school for girls, parole of inmates, 80-924

PROCESS
Amendment of process, when permitted, M. R. Civ. P., Rule 4 D(7)
Criminal procedure, summons, definition, issuance, form and service, failure to appear, 95-601, 95-612, 95-613
Motion to raise question of insufficiency, M. R. Civ. P., Rule 12(b)
Service, M. R. Civ. P., Rule 4 D—See SERVICE OF PROCESS
Summons, M. R. Civ. P., Rule 4 C—See SUMMONS

PROFESSIONAL SERVICE CORPORATIONS
Advertising prohibited, 15-2112
Annual report, required contents, 15-2115
Business of corporations restricted to professional services, 15-2108
Capital stock, restrictions on holdings, 15-2109
Citation of act, 15-2102
Consolidation and merger of corporations, restrictions, 15-2114
Definition of terms, 15-2103
Directors, number required, 15-2113
Disqualification of agent to practice profession, severance of connection with corporation, 15-2110
Dissolution of corporation for noncompliance, 15-2110
Ethical standards for professional conduct unimpaired by act, 15-2107
General corporation law, application, 15-2114
Individual liability for professional acts unaffected by incorporation, 15-2107
Investment of surplus funds permitted, 15-2108
Legislative intent, 15-2101
Liability of corporation for acts of agents while rendering professional services, 15-2107
Previously existing corporations, application of act to, 15-2104
Property ownership restricted to that necessary for professional services, 15-2108
Purposes for which corporations organized, 15-2105
Redemption of shares by corporation, provision for, 15-2111
Regulatory acts unaffected by act, 15-2116
Securities law unaffected by act, 15-2116
Services to be rendered through licensed officers and agents, 15-2106
Short title of act, 15-2102
Transfer of shares, restrictions on, 15-2111
Voting trust agreements prohibited, 15-2109

PROHIBITION
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A

PROMISSORY NOTES
See COMMERCIAL PAPER, 87A-3-101 to 87A-3-805

PROPERTY
Coroner, disposition of property found on body, 95-810
Pension trusts
statutory and common law limitations inapplicable to, 67-423
validity, 67-424
Personal property
accessions to personal property, effect of Uniform Commercial Code, 67-1410
partition or sale authorized, 93-6301.1
county in which action shall be brought, 93-6301.1
procedure, 93-6301.2
Principal and income act, 67-1901 to 67-1916—See PRINCIPAL AND INCOME ACT

PROPERTY (Continued)
Real property
co-ordinate system used in describing property, 67-2011 to 67-2019—See CO-ORDINATE SYSTEM
corner recordation
certification and signing of records filed, 67-2009
citation of act, 67-2001
county clerk and recorder, duties concerning filing, 67-2007
definition of terms, 67-2003
form and contents of filing prescribed by board, 67-2006
permitted filing of property corners, 67-2005
previously established corners, filings concerning, 67-2010
purpose of act, 67-2002
reconstruction and rehabilitation of monument, 67-2008
required filing of corners and monuments established, 67-2004
fixtures, priority of security interest, 87A-9-313
inducing engagement as advertising agency for sale of real property by misrepresentation of service, penalty, 94-1822
joint tenancy created by direct conveyance, 67-1602.1
licensees for recreational purposes, restricted liability to, 67-808
definition of recreational purposes, 67-809
liens excluded from Uniform Commercial Code, 87A-9-104
persons who may purchase state lands, 81-908
subdivided lands, sale or lease outside state
additional information required by commissioner, 67-2105
fee for filing of questionnaire, 67-2106
blanket encumbrances
definition, 67-2109
protection of purchasers and lessees, provisions for, 67-2110
bond for protection of purchasers and lessees, 67-2110
change of address or depository, notice to commissioner, 67-2113
contracts for sale of property, required contents, 67-2111
desist and refrain orders, 67-2114
escrow arrangements for protection of purchasers and lessees, 67-2110
fees payable to commissioner
deposit and use of fees, 67-2106
notice of intention, filing fee, 67-2104
questionnaire filing fee, 67-2106
findings of commissioner not to be used in advertising, 67-2108
inspection of records by commissioner, 67-2113
investigation by commissioner of subdivisions offered, 67-2107
multiple sales or leases, notice to commissioner, 67-2112
notice to commissioner of intention to offer lands, contents, 67-2103
rules and regulations, 67-2102
size of tracts to which act applies, 67-2101
statute of limitations, application to actions arising from, 67-2115
title held in trust for protection of purchasers and lessees, 67-2110
tracts to which act applies, 67-2101
violations construed as misdemeanors, 67-2116
unit ownership of buildings
access to units for maintenance and repair work, 67-2311
actions to enforce rights under act, 67-2338
alterations jeopardizing property prohibited, 67-2309
blanket mortgages and liens, release on conveyance of unit, 67-2323
bylaws, adoption, recording and amendment, 67-2320
compliance with bylaws required of unit owners, 67-2313
contents of bylaws, 67-2321
common elements of building
access to units to prevent damage to common elements, 67-2311
expenses for common elements, charging to unit owners, 67-2308
foreclosure of liens for common expenses, 67-2327
grantor and grantee jointly liable for unpaid expenses, 67-2330
liability for contributions not to be avoided by waiver, 67-2312
lien of association for common expenses, 67-2326

PROPERTY (Continued)
Real property (Continued)
unit ownership of buildings (Continued)
common elements of building (Continued)
expenses for common elements (Continued)
purchaser at foreclosure sale not liable for expenses, 67-2329
records and accounts of expenses, 67-2325
rent paid by unit owner after foreclosure of lien, 67-2328
maintenance of common elements as provided by bylaws, 67-2311
partition of common elements prohibited, 67-2307
percentage of common elements held by unit owners, 67-2306
profits from common elements, distribution, 67-2308
separation from unit ownership prohibited, 67-2307
undivided interest held by unit owners, 67-2306
use of common elements, rights of unit owners, 67-2310
compliance by unit owners with bylaws, rules and regulations, and covenants required, 67-2313
conveyance of individual units permitted, 67-2304
contents of deed, 67-2322
damage to or destruction of building, repair, reconstruction or removal from act, 67-2334
declaration required to subject building to unit ownership, 67-2303
assessor to approve declaration before recording, 67-2317
contents of declaration, 67-2314
definition of declaration, 67-2302
preliminary declaration, filing, 67-2315
recording of declaration and certified copy, 67-2318
definition of terms, 67-2302
encumbrance of individual units permitted, 67-2304
exclusive ownership and possession of individual units, 67-2305
exemptions from execution, application to units, 67-2341
floor plans recorded with declaration, contents, 67-2319
insurance of building against loss or damage, 67-2331
liens against units, manner of attachment and release, 67-2324
blanket lien, release from on conveyance of unit, 67-2323
common expenses, lien for, 67-2326
foreclosure of liens for common expenses, 67-2327
purchaser at foreclosure not liable for common expenses, 67-2329
rent payable by unit owner after foreclosure of lien, 67-2328
mortgage of individual units permitted, 67-2304
name of property, restrictions on, 67-2316
obsolete property, renewal, restoration or sale, 67-2333
organization of unit owners prescribed by bylaws, 67-2321
preliminary declaration filed before construction, 67-2315
recording of declaration, 67-2318
removal of property from provisions of act
common ownership by unit owners results, 67-2335
lienholders' consent required, 67-2332
partition proceedings by unit owner after removal, 67-2336
resubmission to act permitted after removal, 67-2337
renewal and restoration of obsolete property, 67-2333
sale of building after removal from act, 67-2336
sale of individual units permitted, 67-2304
service of process with respect to two or more units, 67-2338
agent to receive process named in declaration, 67-2314
change of agent for service of process, 67-2339
short title of act, 67-2301
taxation of units, 67-2340
exemptions from taxation, application, 67-2341
rules and regulations for appraisal and assessment, 67-2342
Search and seizure, disposition of seized property, 95-1712 to 95-1716
Unclaimed property
attorney-general to assist in regulation, 67-2226
bank deposits and funds, when presumed abandoned, 67-2202

PROPERTY (Continued)
Unclaimed property (Continued)
business association deposits and funds, when presumed abandoned, 67-2202
checks, deposits and money orders, when presumed abandoned, 67-2202
citation of act, 67-2230
claim for property delivered to state treasurer, filing, 67-2219
hearing and determination of claim by treasurer, 67-2220
judicial review of treasurer's determination, 67-2221
conflict of laws, 67-2227
cooperative association distributions, when presumed abandoned, 67-2205
corporate stock or distributions, when presumed abandoned, 67-2205
court, when property held by presumed abandoned, 67-2208
definition of terms, 67-2201
delivery of property to state treasurer, 67-2213
action to compel delivery, 67-2224
dissolution of corporate enterprise, when distributions presumed abandoned, 67-2206
examination of records of persons required to report, 67-2223
fiduciary property, when presumed abandoned by beneficiary, 67-2207
income or increment after delivery to state treasurer, owner not entitled to, 67-2215
insurance funds, when presumed abandoned, 67-2203
limitation statutes not affecting duties under act, 67-2216
money orders, when presumed abandoned, 67-2202
nonresident owner, reciprocal provisions eliminating presumption of abandonment, 67-2210
notice by state treasurer to apparent owner, contents, 67-2212
payment of funds to state treasurer, 67-2213
penalties for violations of act, 67-2225
presumption of abandonment for property not otherwise covered, 67-2209
publication of lists by state treasurer, contents, 67-2212
public officer or agency, when property held by presumed abandoned, 67-2208
refunds by state treasurer after payment by holder to another, 67-2214
relief from liability by payment or delivery to state treasurer, 67-2214
report by custodian to treasurer, contents and filing, 67-2211
rules and regulations, 67-2226
sale of property by state treasurer, 67-2217
proceeds of sale, disposition, 67-2218
seized property in criminal cases, disposition of, 95-716
severability of provisions of act, 67-2228
short title of act, 67-2230
small amounts, declination or postponement of possession by state treasurer, 67-2222
uniformity of interpretation of act, 67-2229
utility deposits and refunds, when presumed abandoned, 67-2204
Unsolicited goods deemed a gift, 67-1706.1

PUBLIC ACCOMMODATIONS
Discrimination, freedom from as civil right, 64-301
definition of terms, 64-302
denial of accommodations as misdemeanor, 64-303
Fraud, obtaining accommodations with intent to defraud, penalty, evidence of intent, 94-1831

PUBLIC ACCOUNTANTS
Expenses of board members, payment, 66-1812
Funds received by board of examiners, disposition, 66-1812

PUBLICATION
Legislative proceedings, sale of copies, 43-901 to 43-904—See LEGISLATURE, Publication of proceedings
State publications distribution center, 44-132 to 44-139—See LIBRARIES

PUBLIC BUILDINGS
Architects to carry errors and omissions insurance, 66-114

PUBLIC BUILDINGS (Continued)
Construction programs for state buildings
architects and consulting engineers, appointment, 82-3319
restrictions on architectural work by state, 82-3320
buildings subject to control, 82-3314
definition of terms, 82-3314
emergency repairs and alterations authorized by governor, 82-3316
legislative consent, when required for construction, 82-3316
pecuniary interest prohibited to controller and employees, 82-3321
powers of controller in supervising construction, 82-3318
submission of programs to controller, governor and legislative assembly, 82-3315
supervision of construction by controller, 82-3317
university buildings, authority of regents and governor, 82-3316
Contracts to be let by competitive bidding for construction or improvement, 82-1131
institutions exempt, 82-1131.1
Handicapped persons, construction of buildings to accommodate
buildings subject to requirements, 69-3701
controls to be within reach of wheel chair, 69-3715
crutch distances to be accommodated, 69-3704
definition of terms, 69-3703
design criteria, 69-3704
disabilities to be accommodated, 69-3702
doors, specifications, 69-3708
handles knurled for protection of blind, 69-3716
elevators and control buttons, 69-3714
enforcement responsibilities for act, 69-3719
entrances to accommodate wheel chairs, 69-3707
exit signs, 69-3718
facilities subject to requirement, 69-3701
floors, leveling and surface specifications, 69-3710
grading of site, 69-3705
hazards to be avoided, 69-3718
manholes to be avoided, 69-3718
parking spaces, specifications, 69-3705
projecting signs and objects to be avoided, 69-3718
purpose of requirements, 69-3702
raised identification symbols for use by blind, 69-3716
ramps, grading and surface specifications, 69-3706
lighting on ramps, 69-3718
stairs, specifications and handrails, 69-3709
switches to be within reach of wheel chair, 69-3715
telephones usable by handicapped, 69-3713
temporary buildings, application of requirements to, 69-3701
toilet rooms, specifications, 69-3711
walks, width and grading, 69-3705
warning signals to be both audible and visual, 69-3717
water fountains and coolers, specifications, 69-3712
wheel chair measurements to be accommodated, 69-3704
Heating, native coal preferred, 82-1904.1
use of other fuels not prohibited, 82-1904.2
Insurance proceeds from damaged buildings, deposit and use, 78-1101
Sanitary inspections and correction of conditions by boards of health, 69-4118
Space assignment by department of administration, 82-3308
State capitol improvement and repair, 78-737 to 78-746—See STATE CAPITOL, Building improvement and repair

PUBLIC CONTRACTORS
See also STATE PURCHASING DEPARTMENT AND AGENT
Incomplete contracts, additional bids limited, 82-1927
bid to show bidder not working beyond contract time, 84-3507
excusable delays exempt, 82-1928
Licenses
additional license fees, 84-3505
penalty for failure to file license return, 84-3516

References are to Title and Section numbers

PUBLIC CONTRACTORS (Continued)
Licenses (Continued)
additional license fees (Continued)
refunds of overpayments, 84-3513
rules and regulations, board of equalization to establish, 84-3515
tax credits allowed, 84-3514
withholding of payments, 84-3513
bids to show license number and class, 84-3507
classes of licenses, 84-3505
definition of terms, 84-3501
residency for preference, determination of, endorsement upon license, 82-1925.1
Preference to Montana bidders
contract provision for preference to Montana materials and labor, 82-1926
definition of residence, 82-1925
determination of residency by state board of equalization, 82-1925.1
federal aid projects exempt, 82-1926
percentage differential, 82-1924

PUBLIC DEFENDERS
Authority of counties to establish and maintain offices, 95-1006

PUBLIC EMPLOYEES' RETIREMENT ACT
Annuities, amount receivable, 68-901
Compulsory retirement, 68-802
Contributions, normal rate, 68-702
voluntary additional contributions, 68-706
Contributions paid into agency fund, 68-405
Criminal investigator's office covered, 82-418
Death benefit, 68-1101
Deductions from salaries
city payrolls, 68-705
state salaries, 68-704
university salaries, 68-704
Disability retirement allowance, 68-901
Dormant accounts transferred to pension accumulation fund, 68-710
Fees, annual membership, 68-707
Fund abolished, 68-405
Game wardens, 68-1401 to 68-1429—See FISH AND GAME, Wardens for enforcement of laws
Judges' retirement fund, payments into, investment, 93-1111
Municipal employee applying for coverage by act, 68-301
National guard employees eligible, 68-1316
Retirement at age 65 or over without accumulated ten years service, election of service retirement allowance, 68-802
Retirement fund, investment, custody and management, 68-701
Service retirement allowance, 68-901
Vehicle equipment safety commission employees, agreement for coverage, 32-21-170
Withdrawal of contributions on terminating service before retirement, 68-708
redeposit and reinstatement of membership, 68-709

PUBLIC FINANCE
Bond validating act
definitions, 79-2002
pending actions, act inapplicable to, 79-2004
short title, 79-2001
validating provisions, 79-2003
County bond issues
election
notice, 16-2026
preparation of lists of registered electors, 16-2026
qualified voters, 16-2026
form and execution of bond, 16-2033
Facsimile signatures of public officials—See PUBLIC OFFICERS AND EMPLOYEES, Facsimile signatures of public officials

References are to Title and Section numbers

PUBLIC FINANCE (Continued)
Legislative audit committee and legislative auditor, 79-2301 to 79-2313—See LEGISLATIVE AUDIT ACT
Limitation on indebtedness of city, town, township, school district or high school district, XIII, 6
Moneys received from federal government under flood control act
distribution to counties, 79-2101
expenditure of funds by counties, 79-2102
Post war planning and construction reserve fund abolished, 79-416
Revenue bond refunding bonds, terms and negotiability, 79-1905
State controller—See STATE CONTROLLER
State finance
budget of contemplated expenditures as requirements before federal aid may be received, duty of director of budget concerning, 82-112
claims against the state
assignment of claims, 83-901 to 83-904
authorization for payment given by department head, 82-109.1
certification by head of department, 82-109.1
disapproval by controller, appeal to board of examiners, 82-109.3
forms prescribed by state controller, 82-109.3
order of processing of claims, 82-109.3
pre-audit of liquidated claims, 82-109.2
records maintained by departments, 82-109.1
unliquidated claims, transmittal to board of examiners, 82-109.2
contingent revolving accounts for state institutions and agencies, 79-602
deposit of receipts by state agencies with treasurer or depository, 79-306
depositories of state funds
bonds and securities pledged as collateral, 79-306
deposits by state agencies with depositories, 79-306
substitution of collateral by depository, 79-301
expenditures in excess of income prohibited, 79-901
penalty for violations, 79-904
expert on financial matters, appointment by board of land commissioners, salary for services, 79-1202
fire insurance fund abolished, 79-416
institutional support
appropriation of income from endowments and grants for support of institutions, 79-601
contingent revolving accounts, establishment by controller, 79-602
retention of income and deposits by institutions, 79-603
investment of funds
accounts maintained by treasurer, 79-1208
departmental requests for investment, 79-1203
excessive payment of invested funds prohibited, 79-1214
interest from trust and legacy fund, apportionment to subfunds, 79-1211
long term investment fund, moneys included, 79-1202
payments of interest or principal from invested funds, statement to board of land commissioners, 79-1213
permanent school and other funds, types of investment permitted, 81-1001
income moneys, 81-1005
principal invested in trust and legacy fund, repayment, 79-1212
short term investment fund, moneys included, 79-1202
sinking funds, investment as part of short term investment fund, 79-304
trust and legacy fund, investment by land commissioners, 79-1202
supervision by supreme court, 79-1206
unified investment plan, 79-1202
permanent grants to state institutions
disbursement of funds, 79-1402
income and interest moneys to be used for payment of claims, 79-1403
investments, types permitted, 81-1001
income moneys, 81-1005
receipts, monthly deposit required, 79-1401
refunding bonds or debentures, nature of issuance, 79-1802
salary schedules maintained by controller, 82-109.4

PUBLIC FINANCE (Continued)
State finance (Continued)
state budget act
blanks for preparation of budget estimates
distribution, 79-1013
duty of department, institutions and agencies, 79-1013
budget director
duties, 79-1017
inquiries and investigations by, 79-1016
power to demand and receive information from state departments and officers, 79-1018
budget message, 79-1015
budget of contemplated expenditures required by federal agency as condition to federal aid, duty of director of budget to submit budget to governor, 82-112
detailed budget estimate, 79-1015
director of budget, appointment, 79-1012
division and parts of budget submitted to legislature, 79-1015
expenditures during first year of biennium from appropriation for second year, 79-1019
governor constituted chief budget officer, 79-1012
inquiries and investigations by budget director, 79-1016
preliminary budget, preparation, 79-1014
proposed budget bill, 79-1015
submission of budget to legislature, 79-1015
submission of preliminary budget to governor and governor elect, 79-1014
vehicle equipment safety commission budget, submission to director, 32-21-173
treasury fund structure
accounts within funds, creation and abolition by controller, 79-413
clearing and suspense accounts authorized, 79-412
disbursements from funds, appropriations, general laws or contracts authorizing, 79-415
enumeration and description of funds, 79-410
future laws or contracts requiring segregation of moneys, interpretation, 79-411
investment funds authorized under unified plan, 79-412
previous definitions of funds superseded, 79-411
purpose of act, 79-409
records of funds and accounts, maintenance by treasurer and controller, 79-414
short title of act, 79-409
special funds abolished and transferred to general fund, 79-416
unexpended appropriations, dispositions, 79-1011
warrants
order in which drawn, 79-104
required for payment of moneys by treasurer, 79-202

PUBLIC HEALTH
Clean Air Act, 69-3904 to 69-3923—See AIR POLLUTION CONTROL
Definition of terms, 69-4102
Occupational disease prevention, 69-4201 to 69-4205—See INDUSTRIAL HYGIENE
Penalty for violation of health laws or rules, 69-5701
State department of health, 69-4101 to 69-4111—See DEPARTMENT OF HEALTH
Tuberculosis—See TUBERCULOSIS
Violation of health laws or rules as misdemeanor, 69-5701

PUBLIC OFFICERS AND EMPLOYEES
Bonds required of state officers and employees
amount of bond required, determination, 6-106
companies permitted to write bonds, 6-107
competitive bidding for bonds required, 6-106
controller to purchase bonds, 6-105
form of bonds, approval, 6-105
group bonds permitted, 6-105
judicial employees exempt from general provision, 6-105
legislative employees exempt from general provision, 6-105
premiums, proration and payment, 6-108

References are to Title and Section numbers

PUBLIC OFFICERS AND EMPLOYEES (Continued)
Facsimile signatures of public officials
"authorized officer" defined, 59-1301
definitions, 59-1301
effect of facsimile signature, 59-1302
facsimile seal, use, 59-1303
"facsimile signature" defined, 59-1301
"instrument of payment" defined, 59-1301
"public security" defined, 59-1301
requirement before facsimile signature may be used, 59-1302
short title of act, 59-1306
uniformity of interpretation, 59-1305
use of facsimile signature in lieu of manual signature, 59-1302
violations of act with intent to defraud, felony, 59-1304
Hours of work of salaried employees, 59-510
Mileage allowance for travel in own vehicles, 59-801
liability for approval of excess amounts, 59-802
Per diem allowances while in travel status, 59-538
Public employees' retirement act—See PUBLIC EMPLOYEES' RETIREMENT ACT
Salary schedules maintained by controller, 82-109.4
Social security coverage authorized, 59-1103
contribution account, sources, administration and use, 59-1105
contributions fund, investment, 59-1105
payment for, 59-1103
plans for coverage of employees of political subdivisions, 59-1104
school support funds liable for district's share of contributions, 59-1110
Successor, substitution as party in pending action, M. R. Civ. P., Rule 25(d)

PUBLIC PROPERTY
Coal leases, county property, term, 16-1030
Lease of county property, 16-1030
Taxation of property subject to contract of sale or option to purchase, 84-204
valuation and assessment of property, 84-205

PUBLIC RECORDS
Destruction of old county and school district records, 59-514
fiscal records, destruction after period of years, 59-516
Financial documents, destruction authorized after 25 years, 59-516
Financing statements under Uniform Commercial Code, period for which retained, 59-516.1

PUBLIC SERVICE COMMISSION
Licensing of VHF booster or VHF translator systems for television—See TELEVISION

PUBLIC UTILITIES
Financing statements of utility, contents and place of filing, 87A-9-302.2
definition of terms, 87A-9-302.1
Uniform Commercial Code, application, 87A-9-302.3
Highways, location of facilities along, 32-2414
costs paid by highway commission, 32-2415
definition of terms, 32-2416
Securities, issuance
exemption from Securities Act, 15-2013
order of commission authorizing issuance, 70-117.2
petition for issuance, contents and filing, 70-117.2
purposes for which issuable, 70-117.1
short term obligations issuable without commission approval, 70-117.3
state not obligated by authorization of issue, 70-117.6
subject to regulation and supervision by public service commission, 70-117.1
time allowed for disposition of applications, 70-117.4
unapproved securities void, 70-117.5
Unclaimed deposits and refunds, when presumed abandoned, 67-2204—See PROPERTY, Unclaimed property

References are to Title and Section numbers

PUBLIC WELFARE

Aid to dependent children
- amounts received by recipients as enrolled member of Indian tribe, effect, 71-509
- changes in amount of assistance, 71-509
- guardianship, creating, when, 71-509

Aid to needy blind
- amounts received by recipients as enrolled member of Indian tribe, effect, 71-607
- application, 71-607

County board of public welfare
- reimbursement for staff personnel expenses, 71-217
- staff personnel, appointment and dismissal, 71-217

County poor fund tax levy, budgeting and use, 71-222

Day care facilities, licensing and regulation, 10-801 to 10-811—See DAY CARE FACILITIES

Dependent child aid, students eligible for, 71-501

Economic opportunity and poverty relief
- city-county commissions, creation authorized, 71-1604
- federal agencies, agreements with authorized, 71-1602
- public funds, expenditure authorized, 71-1603
- purpose of act, 71-1601

Funds available for welfare, receipt and crediting, 71-901

General relief
- payment of relief, means used, 71-307
- work required of persons on relief, 71-307
  - workmen's compensation coverage, 92-411

Lien on property of recipient, agreement for, 71-241

Medical assistance
- administration and supervision by state and county departments, 71-1511
- amount, scope and duration of assistance, 71-1517
- application for assistance to county department, form, 71-1518
- confidential nature of records, 71-1523
- contracting with other agencies to process claims and provide services, 71-1515
- council to advise state department, composition, 71-1513
- county reimbursement of state payments, 71-1519
  - change of residence, effect on county's obligation, 71-1522
- discrimination prohibited, 71-1526
- eligibility for aid, 71-1516
  - change of residence, effect on eligibility, 71-1522
  - determination of eligibility by county department, 71-1520
  - redetermination of eligibility, 71-1521
- freedom of medical practice and selection of doctor, 71-1514
- investigation of applications by county department, 71-1520
- lien on property not to be required of recipient, 71-1524
- recovery of payments from estate of deceased recipient, 71-1524
- relative's responsibility, 71-1525
- services included, 71-1512

Old-age assistance
- medical aid disqualifying for old-age assistance, 71-402
- vendor medical payments
  - county reimbursement, 71-405
  - investigation of applications, 71-406

Persons receiving benefits under public welfare not entitled to compensation under occupational disease act, 92-1332

Poverty relief, 71-1601 to 71-1604—See Economic opportunity and poverty relief, above

Silicosis payments, transfer of records and payrolls to industrial accident board, 71-1009

State hospital, maintenance of indigent persons discharged from, 38-110

PULMONARY DISEASE HOSPITAL

See GALEN STATE HOSPITAL, 80-1701 to 80-1704

References are to Title and Section numbers

Q

QUARANTINE
State quarantine in case of communicable disease, 69-4112
emergency action by executive officer, 69-4113
Venereal disease cases, isolation, 69-4605

QUIETING TITLE
Summons in action, statement to be added, M. R. Civ. P., Rule 4 C(2)

QUO WARRANTO
Supreme court proceedings, M. R. App. Civ. P.—See SUPREME COURT, Original proceedings in supreme court

R

RACING ASSOCIATIONS
Horse racing, 62-501 to 62-514—See HORSE RACING

RADAR
Radar arrest cases, 32-2150.1 to 32-2150.3

RADIATION CONTROL
Advisory committee, appointment and functions, 69-5805
Control agency, powers and duties, 69-5804
Co-operative agreements with federal government and other agencies, 69-5810
Definition of terms, 69-5803
Emergency actions by board of health, 69-5812
Exemptions from statutory regulation, 69-5815
Exposure records required for persons exposed to radiation, 69-5808
Federal responsibility for radiation sources, assumption by state, 69-5809
Hearings required in regulatory proceedings, 69-5812
Impounding of radiation sources possessed by unauthorized persons, 69-5814
Inspections to determine compliance with act and rules, 69-5807
agreements with other agencies for co-operative inspections, 69-5810
Licensing of persons handling radioactive materials and equipment, 69-5806
Local regulations not superseded by act, 69-5811
Medical use of radiation not restricted, 69-5808
Penalty for violations, 69-5816
Policy of state, 69-5801
Procedural requirements for regulatory acts, 69-5812
Prohibited uses of radiation sources, 69-5813
Purpose of regulation, 69-5802
Records required of persons possessing sources of ionizing radiation, 69-5808
Registration of persons handling radioactive materials and equipment, 69-5806
Training programs to qualify personnel, 69-5810

RADIO
Publication of notice supplemented by broadcast, 19-201
copy of transcript to be retained by broadcasting station, 19-202
proof of publication, 19-203

RAILROADS
Board of railroad commissioners
motor carrier rate regulation, 8-103, 8-104.1 to 8-104.6—See MOTOR CARRIERS
rules for protection of health and safety of railroad employees, 72-150
Bonds of railroad companies, issuance and terms, 72-224
Borrowing power of railroad companies, 72-211
Equipment trusts excluded from Uniform Commercial Code, 87A-9-104
Financing statements of railroad, contents and place of filing, 87A-9-302.2
definition of terms, 87A-9-302.1
Uniform Commercial Code, application, 87A-9-302.3
Flood control projects, contracts for use of railroad property for, 89-3310
Railroad commissioner, salary, 25-501
Securities, when exempt from securities act, 15-2013

References are to Title and Section numbers

REAL ESTATE BROKERS

Action by broker for commission, licensing to be alleged and proved, 66-1941
Bond required, contents and filing, 66-1933
Citation of act, 66-1924
Commission, composition, powers, and duties, 66-1927
- attorney general to act for commission, 66-1944
- educational activities authorized, 66-1943
- witnesses before commission, enforcement of attendance and testimony, 66-1938

Corporations, all active officers and salesmen required to be licensed, 66-1942
Definition of terms, 66-1925
Directory of licensees, publication by commission, 66-1945
Educational activities of commission, 66-1943
Employment of salesman by broker, license provisions, 66-1935
Exemptions from act, 66-1926
Fees payable to commission, 66-1934
- annual fees, when payable, 66-1934
- deposit in treasury and apportionment of fees, 66-1927
- excess fees, disposition, 66-1928
- expenses of commission, payment from fund, 66-1927
- schedule of fees prepared by commission, 66-1934

Fixed office required of broker, 66-1935
Fraudulent practices act, licensing law supplemental to, 66-1946
Liability for damages from failure to comply with act, 66-1940
Licenses
- annual fees, cancellation for failure to pay, 66-1934
- bond required for license, 66-1933
- commission of broker or salesman, proof of licensing required in action to collect, 66-1941
- corporations, licenses required, 66-1942
- display of license by broker required, 66-1932
- employment change by salesman, new license required, 66-1935
- examination of applicants for license, 66-1930
- fees payable for licenses, 66-1934
- form prescribed by commission, 66-1932
- issuance of license, regulation by commission, 66-1931
- nonresident brokers, reciprocal licensing and privileges, 66-1936
- partnerships, licenses required, 66-1942
- penalty for acting without license, 66-1940
- pocket card, issuance by commission, 66-1932
- previously licensed brokers and salesmen, licensing without examination, 66-1930
- qualification of licensees, 66-1929
- required for conduct of business, 66-1924
- revocation or suspension of license, power of commission, 66-1931
  - appeal to courts, 66-1939
  - effective date of decision of commission, 66-1939
  - grounds for revocation or suspension, 66-1937
  - hearing by commission, notice and conduct, 66-1938
- salesman's license kept by broker, 66-1932

Nonresident brokers, licensing and conduct of business by, 66-1936
Partnerships, all active partners and salesmen required to be licensed, 66-1942
Penalties for violations of act, 66-1940
Place of business of broker to be designated in license, 66-1935
Service of process on nonresident brokers, 66-1936
Short title of act, 66-1924

REAPPORTIONMENT

Legislative apportionment, VI, 2 and 3; 43-106.1, 43-106.2

RECEIVERS

Appointment for consumer loan licensees, 47-227
Bulk Transfer chapter inapplicable to sales by receivers, 87A-6-103
Corporations, liquidation of
- business corporations, 15-2291, 15-2292
- nonprofit corporations, 15-2355, 15-2356

RECEIVERS (Continued)
Real estate brokers' act, exemptions from, 66-1926
Statutes and rules governing receivers, M. R. Civ. P., Rule 66
Voting of corporate shares standing in name of receiver, 15-2231

RECIPROCAL ENFORCEMENT OF SUPPORT
See SUPPORT, Reciprocal enforcement, 93-2601-1 to 93-2601-40

RECOGNIZANCE
Preliminary examination of criminal defendant, recognizance by witness after examination, 95-1204
Release of person in custody on own recognizance, 95-1106

RECORDING
After-acquired interests, recording as constructive notice of prior conveyance, 73-201
Method of recordation of certain instruments, when proper, 16-2903
Microfilm, 16-2903
Photostatic or other mechanical processes
admissibility into evidence, 16-2430
authorized in counties, 16-2428
enlargement, 16-2430
reproduction as public record, 16-2429
storage of copy, 16-2431
substitution of reproduction for original, 16-2429

RECORDS
Photostatic or mechanical processes in counties—See RECORDING

RECREATION
Landowner's restricted liability to gratuitous licensee for recreation, 67-808
definition of recreational purposes, 67-809
Outdoor recreational resources, development, 62-401 to 62-404—See OUTDOOR RECREATIONAL RESOURCES

REFEREES
See MASTERS, M. R. Civ. P., Rule 53

REFRIGERATED LOCKERS
See FOOD AND DRUGS, Food service establishments, 27-611 to 27-625

REFUSE DISPOSAL AREAS
Definition of terms, 69-4002
Disposal in unlicensed area prohibited, 69-4003
Highway protection laws unimpaired, 69-4010
Landowner's rights preserved, 69-4008
Legislative findings, 69-4001
License required for operation of disposal area, 69-4004
application for license, 69-4004
expiration and renewal of licenses, 69-4005
fee for license, disposition, 69-4004
inspection and approval by health officials, 69-4005
public agencies exempt from license requirement, 69-4008
revocation of or refusal to renew license, 69-4006
Penalty for violations, 69-4009
Policy of state, 69-4001
Publicly operated disposal areas, application of requirements to, 69-4008
Repeal of conflicting acts, 69-4010
Rules and regulations, publication and enforcement, 69-4007
Water supply protection laws unaffected, 69-4010

RELEASE
Affirmative defense, M. R. Civ. P., Rule 8(c)

References are to Title and Section numbers

RELIGIOUS CORPORATION SOLE ACT
Annual report required, 15-2409
Application of act, 15-2402
Articles of incorporation
amendment of articles, 15-2410
filing with secretary of state, 15-2404
form and contents, 15-2404
verification by incorporation, 15-2404
Board of advisors or consultors, number, qualifications, powers, 15-2408
Certificate of incorporation, issuance by secretary of state, effect of, 15-2405
Creation of corporation sole, when lawful, 15-2403
Incorporator, 15-2403
Invalidity of part of act, effect of, 15-2413
Powers of corporation sole, 15-2406
succession on death or resignation from office, 15-2407
Repeal of prior acts, effect of, 15-2412
Short title, 15-2401
Succession, when effected, 15-2407
interim powers of board of advisors or consultors, 15-2408
Unauthorized assumption of corporate powers, liability for debts and liabilities incurred, 15-2411

REPORTS
Printing and distribution of reports, 82-1916

RESCUES AND ESCAPES
Escape from prison, venue of prosecution, 95-409
Interstate detainer, escape from custody on, penalty, 94-1101-4
Juvenile facilities of department of institutions, apprehension and return of absentee, 80-2211
penalty for aiding escape, 80-2212

RES JUDICATA
Affirmative defense, M. R. Civ. P., Rule 8(c)

RESTAURANTS
Licensing and regulation, 27-611 to 27-625—See FOOD AND DRUGS, Food service establishments
Wages of employees of lessees, protection, 41-2001 to 41-2011—See WAGES, Restaurant, Bar and Tavern Wage Protection Act

RESTRAINT OF TRADE
Bids for contracts, unlawful agreements for refunds or returns, penalty, 94-1104

RETIREMENT
See PUBLIC EMPLOYEES' RETIREMENT ACT
Game wardens, 68-1401 to 68-1429—See FISH AND GAME, Wardens for enforcement of laws, retirement system
Judges, 93-1107 to 93-1132—See JUDGES, Retirement system

ROADBLOCKS
Arrests at, requirements, 95-618

RUBBISH
Disposal areas regulated, 69-4001 to 69-4010—See REFUSE DISPOSAL AREAS

RULES OF APPELLATE CIVIL PROCEDURE
See Title 93, Chapter 3001

RULES OF CIVIL PROCEDURE
See Title 93, Chapter 2701

RULES OF CRIMINAL PROCEDURE
See Title 95, Chapter 28

RURAL IMPROVEMENT DISTRICTS
See COUNTIES, Rural improvement districts

S

SALARIES
Adjutant general, 77-117, 77-120
Assignment of claims against state, 83-901 to 83-904
Commissioner of labor and industry, 41-1603
Commissioner of state lands and investments, 81-209
County officers, 25-605
establishment before election, 25-609
District court judges, 93-303
Elected state officials, 25-501
salary in full for all services, exceptions, 25-501.1
Highway patrolmen, 31-105
Industrial accident board appointed member, 92-104
Justices of the peace, 25-306
Schedules maintained by controller, 82-109.4
State board of equalization members, 84-702
State examiner, 82-1011
State forester, 81-1403
Warden of state prison, 80-705

SALES
Acceleration of performance, good faith required in exercising option, 87A-1-208
Acceptance of goods
acts constituting acceptance, 87A-2-606
approval sales, effect, 87A-2-327
damages for nonacceptance by buyer, measure, 87A-2-708
evidence of conformity or nonconformity, rights of parties to preserve, 87A-2-515
failure to reject as acceptance, 87A-2-606
inspection rights of buyer, 87A-2-513
nonconforming goods, buyer's right to accept or reject, 87A-2-601
effect of acceptance on remedies, 87A-2-607
recovery of damages by buyer, 87A-2-714
ownership rights, exercise as acceptance, 87A-2-606
partial acceptance of commercial unit, effect, 87A-2-606
payment before inspection not acceptance, 87A-2-512
payment required for goods accepted, 87A-2-607
revocation of acceptance, 87A-2-608
tender of delivery as condition to seller's right to acceptance, 87A-2-507
Acceptance of offer, means permitted, 87A-2-206
additional terms proposed in acceptance, effect, 87A-2-207
auction sales, 87A-2-328
Anticipatory repudiation, 87A-2-610
retraction of repudiation, 87A-2-611
Approval sales, 87A-2-326, 87A-2-327
Assignment of rights under contract, effect on parties, 87A-2-210
Assortment of goods to be selected by buyer, 87A-2-311
Assurance of performance, rights of parties to demand, 87A-2-609
Auction sales, special provisions applicable, 87A-2-328
Authenticity of third-party documents presumed, 87A-1-202
Breach of contract
remedies of seller, 87A-2-703
risk of loss, effect of breach on, 87A-2-510
Bulk sales, 87A-6-101 to 87A-6-111—See BULK TRANSFERS
Casualty to identified goods, effect on rights of parties, 87A-2-613
C.&F. terms, effect on obligations, 87A-2-320, 87A-2-321
C.I.F. terms, effect on obligations, 87A-2-320, 87A-2-321
Citation of Uniform Commercial Code chapter, 87A-2-101
Conditional sales, 87A-9-101 to 87A-9-507—See SECURED TRANSACTIONS
definition of term, 19-103
Consignment sales, 87A-2-326, 87A-2-327

References are to Title and Section numbers

SALES (Continued)
Consumer sales statute unimpaired by Uniform Commercial Code, 87A-2-102
Course of dealing between parties, application, 87A-1-205
Course of performance, effect on contract, 87A-2-208
Creditors' rights against sold goods
agreements as to applicable state law, restrictions, 87A-1-105
approval sales, claims of buyer's creditors against, 87A-2-326
buyer's interest taking priority, 87A-2-402
fraudulent sales, avoidance, 87A-2-402
return sales, claims of buyer's creditors against, 87A-2-326
voidable preference, sale constituting, 87A-2-402
Damages for breach
agreements limiting or altering measure of damages, 87A-2-719
buyer's damages for nondelivery or repudiation, measure, 87A-2-713
incidental expenses of seller, items recoverable, 87A-2-710
liquidated damages, 87A-2-718
market price, determination, 87A-2-723
published quotations, use in evidence, 87A-2-724
penal damages prohibited, 87A-2-718
Definition of terms, 87A-2-103
"agreement," 87A-2-106
"between merchants," 87A-2-104
"cancellation," 87A-2-106
"commercial unit," 87A-2-105
"conforming," 87A-2-106
"contract," 87A-2-106
"financing agency," 87A-2-104
"future" goods, 87A-2-105
general definitions in Commercial Code, 87A-1-201
"goods," 87A-2-105
index of definitions, 87A-2-103
"lot," 87A-2-105
"merchant," 87A-2-104
"present sale," 87A-2-106
"sale," 87A-2-106
"termination," 87A-2-106
Delegation of performance, effect on rights of parties, 87A-2-210
Delivery of goods
C.&F. terms, construction, 87A-2-320
C.I.F. terms, construction, 87A-2-320
cure by seller of improper tender or delivery, 87A-2-508
damages for nondelivery, measure, 87A-2-713
delay excused by failure of presupposed conditions, 87A-2-615
buyer's remedy on claim of excuse, 87A-2-616
evidence of conformity or nonconformity, rights of parties to preserve, 87A-2-515
excuse by failure of presupposed conditions, 87A-2-615
buyer's remedy on claim of excuse, 87A-2-616
ex-ship delivery terms, effect on obligation, 87A-2-322
F.A.S. terms, construction, 87A-2-319
F.O.B. terms, construction, 87A-2-319
no arrival, no sale term, effect on obligation, 87A-2-324
nonconforming goods, buyer's right to accept or reject, 87A-2-601
place of delivery in absence of agreement, 87A-2-308
remedies of buyer for nondelivery, 87A-2-711
shipment by seller as delivery, acts constituting, 87A-2-504
reservation of interest by seller shipping goods, 87A-2-505
shipment means to be selected by seller, 87A-2-311
single lot delivery presumed, 87A-2-307
stoppage in transit on breach or insolvency of buyer, 87A-2-705
indemnification of carrier for loss or expenses, 87A-7-504
substituted performance, when permitted, 87A-2-614
tender of delivery, requirements and acts constituting, 87A-2-503
time for delivery in absence of agreement, 87A-2-309
title passing on delivery in absence of agreement, 87A-2-401
Uniform Commercial Code, applicability, 74-325

SALES (Continued)
Documents of title
adequacy of document governed by chapter on sales, 87A-7-509
customary banking channels used for delivery, 87A-2-308
defects apparent on face of document, payment as waiver of objection, 87A-2-605
draft against documents, acceptance for payment requiring delivery of documents, 87A-2-514
financing agency, rights acquired in documents, 87A-2-506
inspection of goods covered by document, 87A-2-513
overseas shipment, form of bill of lading required, 87A-2-323
shipping documents, tender required for delivery of goods, 87A-2-504
reservation of security interest by seller, 87A-2-505
stoppage in transit by seller
indemnification of carrier for losses and expenses, 87A-7-504
presentation of documents required, 87A-2-705
tender of document as tender of delivery, 87A-2-503
Duration of contract providing for successive performances, 87A-2-309
Exclusive dealing contracts, obligations imposed on parties, 87A-2-306
Excuse of performance by failure of presupposed conditions, 87A-2-615
buyer's remedies on claim of excuse, 87A-2-616
Ex-ship delivery terms, effect, 87A-2-322
Farmer sales statutes unimpaired by Uniform Commercial Code, 87A-2-102
F.A.S. terms, construction, 87A-2-319
Fiduciaries, validation of sales, 91-4324, 91-4325
Financing agency purchasing draft, rights acquired, 87A-2-506
Firm offer to buy or sell, effect, 87A-2-205
F.O.B. terms, construction, 87A-2-319
Formal requisites for contract of sale, 87A-2-204
Fraud, remedies available, 87A-2-721
Fungible goods
undivided share in identified bulk, sale permitted, 87A-2-105
warehouse receipt claim subordinate to buyer from warehouseman, 87A-7-205
Good faith required, 87A-1-203
Identification of goods, time of occurrence, 87A-2-501
Indian articles, regulations for sale of imitation articles, 85-301 to 85-304
Infringement actions against buyer, rights of seller to defend, 87A-2-607
Insecurity of contract, rights of parties to demand assurance, 87A-2-609
Insolvency of buyer, remedies available to seller, 87A-2-702
Insolvency of seller, buyer's right to goods, 87A-2-502
Inspection rights of buyer of goods, 87A-2-513
evidence of conformity or nonconformity, rights of parties to preserve, 87A-2-515
Installment contracts, effect of breach, 87A-2-612
Insurable interest of buyer and seller in goods, 87A-2-501
Judicial sales validated despite defects, 93-5846
Letter of credit, failure of buyer to furnish, 87A-2-325
Limitation of actions arising out of contract, 87A-2-725
Liquidated damage clauses, 87A-2-718
Market price, determination, 87A-2-723
published quotations, use in evidence, 87A-2-724
Merchantable goods, definition, 87A-2-314
Modification of contract, means permitted, 87A-2-209
No arrival, no sale term, effect on obligations, 87A-2-324
Obligations of parties in general, 87A-2-301
Open terms in contract, effect, 87A-2-204
price left open, 87A-2-305
Optional means of performance not invalidating contract, 87A-2-311
Oral evidence to vary written agreement, 87A-2-202
Output of seller, contracts measuring quantity by, 87A-2-306
Overseas shipments, form of bill of lading required, 87A-2-323
Parol evidence to vary written agreement, 87A-2-202
Part interest in identified goods, sale permitted, 87A-2-105
Payment for goods
acceptance creating duty to pay, 87A-2-607
apportionment where delivery is in lots, 87A-2-307

References are to Title and Section numbers

SALES (Continued)
Payment for goods (Continued)
C.&.F. terms, construction, 87A-2-320, 87A-2-321
check payment conditional on honor, 87A-2-511
C.I.F. terms, construction, 87A-2-320, 87A-2-321
F.A.S. terms, effect on obligation, 87A-2-319
F.O.B. terms, effect on obligation, 87A-2-319
forms of payment permissible, 87A-2-304
inspection by buyer before payment, 87A-2-310
letter of credit, delivery suspending obligation to pay, 87A-2-325
nonconformity of goods, effect where contract requires payment before inspection, 87A-2-512
open price terms in contract, 87A-2-305
property to be used in payment, 87A-2-304
substituted means of payment, when permitted, 87A-2-614
tender of delivery as condition to right to payment, 87A-2-507
tender of payment, forms permitted, 87A-2-511
time for payment or running of credit, 87A-2-310
Penalty clauses unenforceable, 87A-2-718
Realty, contract requiring severance of goods from, 87A-2-107
Rejection of goods
acceptance of nonconforming goods precluding rejection, 87A-2-607
installment contracts, effect of rejection of installment, 87A-2-612
instructions from seller as to disposition of goods, 87A-2-603
nonconforming goods, buyer's right to accept or reject, 87A-2-601
notice of rejection to seller, 87A-2-602
obligations of buyer with respect to rejected goods, 87A-2-602
merchant buyer's duties, 87A-2-603
return of goods to seller, 87A-2-604
sale of rejected goods by buyer, 87A-2-603, 87A-2-604
salvage of rejected goods by buyer, 87A-2-604
security interests of buyer in rejected goods, 87A-2-711
storage of rejected goods for seller's account, 87A-2-604
time allowed for rejection, 87A-2-602
waiver of objections by failure to particularize, 87A-2-605
Remedies of buyer, 87A-2-711
agreements limiting or excluding remedies, 87A-2-719
ancillary obligations, remedies unimpaired by Commercial Code chapter, 87A-2-701
anticipatory repudiation, 87A-2-610
cancellation of contract, remedies preserved, 87A-2-720
collateral obligations, remedies for unimpaired by Commercial Code chapter, 87A-2-701
consequential damages recoverable from seller, 87A-2-715
covering purchases of substitute goods, 87A-2-712
damages for nondelivery or repudiation by seller, measure, 87A-2-713
deduction of damages from contract price, 87A-2-717
fraud of seller, remedies available, 87A-2-721
incidental damages recoverable from seller, 87A-2-715
limitation of actions, 87A-2-725
liquidated damages, 87A-2-718
nonconforming goods, recovery after acceptance, 87A-2-714
recovery of identified goods, 87A-2-716
rescission of contract, remedies preserved, 87A-2-720
security interests in rejected goods, 87A-2-711
specific performance, when authorized, 87A-2-716
third parties, actions against for injury to goods, 87A-2-722
warranty, damages for breach, 87A-2-714
Remedies of seller, 87A-2-703
agent standing in position of seller, 87A-2-707
agreements limiting or excluding remedies, 87A-2-719
ancillary obligations, remedies unimpaired by commercial code chapter, 87A-2-701
anticipatory repudiation, 87A-2-610
cancellation of contract, remedies preserved, 87A-2-720
collateral obligations, remedies unimpaired by commercial code chapter, 87A-2-701

References are to Title and Section numbers

SALES (Continued)
Remedies of seller (Continued)
completion of unfinished goods, 87A-2-704
damages for nonacceptance or repudiation, measure, 87A-2-708
fraud of buyer, remedies available, 87A-2-721
identification of goods to contract after breach, 87A-2-704
incidental damages, items included, 87A-2-710
insolvency of buyer, remedies available on discovery, 87A-2-702
limitation of actions, 87A-2-725
liquidated damages, 87A-2-718
price of goods, recovery from buyer, 87A-2-709
resale of goods and recovery of difference from buyer, 87A-2-706
rescission of contract, remedies preserved, 87A-2-720
salvage of unfinished goods, 87A-2-704
secured creditor standing in position of seller, 87A-2-707
stoppage of delivery in transit, 87A-2-705
indemnification of carrier for expenses or loss, 87A-7-504
third parties, actions against for injury to goods, 87A-2-722
Repudiation of contract
anticipatory repudiation, 87A-2-610
retraction of repudiation, 87A-2-611
damages for repudiation by buyer, measure, 87A-2-708
damages for repudiation by seller, measure, 87A-2-713
remedies of buyer, 87A-2-711
remedies of seller, 87A-2-703
Requirements of buyer, contract measuring quantity by, 87A-2-306
Rescission of contract, means permitted, 87A-2-209
Reservation of rights by party while performing or accepting performance, 87A-1-207
Retail installment sales act, 74-601 to 74-612—See INSTALLMENT SALES ACT
Return of goods, contract permitting, 87A-2-326, 87A-2-327
Risk of loss
agreements shifting or dividing risk, 87A-2-303
approval sales, effect, 87A-2-327
breach of contract, effect on risk, 87A-2-510
C.&F. terms, effect, 87A-2-320, 87A-2-321
C.I.F. terms, effect, 87A-2-320, 87A-2-321
ex-ship delivery terms, effect, 87A-2-322
F.A.S. terms, effect, 87A-2-319
F.O.B. terms, effect, 87A-2-319
no arrival, no sale term, effect, 87A-2-324
passage of risk, principles for determining time, 87A-2-509
return sales, effect, 87A-2-327
Scope of Uniform Commercial Code chapter, 87A-2-102
Seals on writings inoperative, 87A-2-203
Security interest retained by seller, law governing interest, 87A-9-113, 87A-9-206
Security transactions exempt from Uniform Commercial Code chapter, 87A-2-102
Severance of goods from realty, sale contract required, 87A-2-107
Short title of Uniform Commercial Code chapter, 87A-2-101
Statute of frauds
goods, contracts for sale of, 87A-2-201
property other than goods and securities, 87A-1-206
Statute of limitations in contracts for sale, 87A-2-725
Statutes unimpaired by Uniform Commercial Code chapter, 87A-2-102
Substituted performance, when permitted, 87A-2-614
Termination of contract
indefinite duration contracts, 87A-2-309
notice of termination by party, 87A-2-309
Time allowed for required actions, 87A-1-204
Transfer of title
approval sales, effect, 87A-2-327
delivery constituting transfer in absence of agreement, 87A-2-401
entrusting of goods to merchant, merchant's power to transfer title, 87A-2-403
identification of goods required for passage, 87A-2-401
rejection or refusal by buyer, revesting of title, 87A-2-401

SALES (Continued)
Transfer of title (Continued)
reservation of title by seller after delivery limited to security interest, 87A-2-401
voidable title giving power to transfer good title, 87A-2-403
Unconscionable provisions, effect on contract, 87A-2-302
Undivided share of fungible goods, sale permitted, 87A-2-105
Usage of trade, application, 87A-1-205
Waiver of executory portion of contract, effect, 87A-2-209
Warranties
action against buyer for breach of warranty, duty to notify seller, 87A-2-607
affirmation creating express warranty, 87A-2-313
conflicting warranties, resolving, 87A-2-317
consequential damages recoverable for breach, 87A-2-715
course of dealing creating implied warranty, 87A-2-314
cumulation of warranties where reasonable, 87A-2-317
damages for breach of warranty, measure, 87A-2-714
description creating express warranty of conformity, 87A-2-313
encumbrance, warranty against, 87A-2-312
exclusion of warranties by agreement, 87A-2-316
express warranties, means of creation, 87A-2-313
fitness for particular purpose warranted where buyer relies on seller's judgment, 87A-2-315
implied warranties, 87A-2-314, 87A-2-315
infringement, warranty against, 87A-2-312
merchantability warranted by implication, 87A-2-314
modification of warranties by agreement, 87A-2-316
promise creating express warranty, 87A-2-313
remedies for breach of warranty, limitation by agreement, 87A-2-316
sample creating express warranty of conformity, 87A-2-313
third-party beneficiaries of warranties, 87A-2-318
title to goods, 87A-2-312
Uniform Commercial Code, applicability, 74-325
usage of trade creating implied warranty, 87A-2-314

SANITARIANS
Appeal procedure, 69-3408
Council
establishment, 69-3402
issuance of certificate of registration to applicants, 69-3403
meetings, 69-3402
officers, 69-3402
register, duties to keep, 69-3402
service of process upon, 69-3409
terms of members, 69-3402
Definitions, 69-3401
Penalty for violation of act, 69-3406
Register, council to keep, 69-3402
Registration
application fee, 69-3404
applications for, 69-3403
issuance of certificate, 69-3403
operating as without being registered prohibited, penalty, 69-3406
reciprocity registration, 69-3407
renewal fee, 69-3404
revocation or suspension
grounds, 69-3405
hearing, 69-3405
power of council, 69-3405
term of certificate, 69-3403

SANITARY LICENSEES
Application for license, contents, 69-5402
Denial, suspension or revocation of license, 69-5401
Enforcement of license requirements, 69-5408

SANITARY LICENSEES (Continued)
Expiration of licenses, 69-5403
Fee for license, 69-5403
local permit fee, 69-5405
Issuance and numbering of licenses, 69-5403
License required for business of cleaning cesspools, septic tanks or privies, 69-5401
Penalty for violations, 69-5408
Permit required from local health officer, 69-5405
Public agencies exempt from license requirement, 69-5407
Rules adopted by state board, 69-5406
Vehicles of licensees, marking, 69-5404

SAVINGS AND LOAN ASSOCIATIONS
Accounts excluded from chapter on secured transactions, 87A-9-104
Dissolution of association, when distribution presumed abandoned, 67-2206—See also PROPERTY, Unclaimed property
Real estate loans permitted, 7-113.1
Retail installment sales act
compliance with provisions of act other than licensing required, 74-603
licensing under not required, 74-603
Unclaimed deposits, when presumed abandoned, 67-2202—See PROPERTY, Unclaimed property

SCHOOL FOR DEAF AND BLIND
Control and supervision vested in state board of education, 75-301
Executive board, composition and duties, 75-302
officers of board, 75-303
Expenditures of school, control by state board, 75-310
Treasurer of school, appointment and bond, 75-303

SCHOOLS
Arbor day, date of observance, 75-2212
Attendance
attendance outside of district of residence, 75-1630
high school pupil attending outside county, 75-4230
high school pupil attending outside state, 75-4146
vocational training centers, attendance outside county, 75-4304
commitment of truants to state institutions, 75-3002
Indian children
boards to require attendance, 75-2910
enforcement of attendance laws on reservations, 75-2909
intent of act, 75-2907
tribal authority, acceptance by school boards, 75-2908
Bonds
investment of funds not immediately needed for construction, 75-3922
notice of election, 75-3912
registration of bond, 75-3942
specification of bond, 75-3942
Budget system
elementary schools, maximum budget, 75-1713.1
emergency budgets, preparation by board and approval by state superintendent, 75-1716
high schools, maximum budget, 75-4518.1
emergency budgets, procedure for adoption, 75-4521
tax levy to pay emergency warrants, 75-4525
warrants against emergency budget, 75-4524
joint school districts, preparation and adoption, 75-1816
preliminary budget, preparation and adoption, 75-1706
reduction of elementary school budget to foundation program, 75-1713.1
tax levy for elementary school, 75-1723
tax levy for joint school districts, 75-1816
transportation budget, preparation and adoption, 75-3414

SCHOOLS (Continued)
Buildings
federal construction aid, acceptance authorized, 75-5101
handicapped persons, accommodation in buildings, 69-3701 to 69-3719—See PUBLIC BUILDINGS, Handicapped persons, construction of buildings to accommodate
health department to set standards and approve plans for construction, 69-4117
inspection and correction of conditions by boards of health, 69-4118
joint interstate facilities, agreements for authorized, 75-3109
election on approval of agreement, 75-3111
financing of facilities, 75-3113
location of joint facilities, 75-3112
superintendent of public instruction to approve agreements, 75-3110
rental of buildings and facilities, 75-1632
leasing of sites, 75-3114 to 75-3125—See Leasing of school house sites and buildings, below
Child nutrition program, 75-4802, 75-4803, 75-4805, 75-4806
Community colleges, 75-4413 to 75-4430—See COLLEGES AND UNIVERSITIES, Community colleges
County school superintendent, establishment of salary before election, 25-609
County treasurer, accounts maintained by, 75-3722
Driver education program
account established in earmarked revenue fund, 75-5304
administrative expenses paid from account, 75-5308
allocation and disbursement of moneys in account, 75-5308
amount of penalty assessments paid into account, 75-5304
bail deposited to include assessment for account, 75-5305
juvenile offenders, payments into account, 94-801-2
state contributions to account, 75-5304
statements of assessments furnished by courts and local treasurers, 75-5309
transmittal of penalty assessments to state treasurer, 75-5306, 75-5307
definition of terms, 75-5302
high schools may establish program, 75-5303
license, issuance after completion of course, 31-127
purpose of act, 75-5301
superintendent of public instruction to supervise program, 75-5303
Elections on school matters, payment of expenses, 75-1620
Equalization aid
administration by state board, 75-3614
ANB, computation, 75-3611
community colleges, aid to, 75-4425
data compiled and kept by state superintendent, 75-3615
definition of terms, 75-3611
distribution of funds to counties, 75-3616
insufficient funds for foundation program, apportionment, 75-3619
distribution of funds to districts by county, 75-3619
foundation program, computation, 75-3612
anticipatory increase in program, 75-3612.1
minimum increase required for application of act, 75-3612.2
supplemental nature of provision, 75-3612.3
county tax levies, distribution among school districts, 75-3618
insufficient funds to support foundation program
apportionment of available funds to counties and districts, 75-3619
certificate of deficiency by state superintendent, 75-3620
warrants issued by school district to meet deficiency, 75-3621
isolated schools, application and approval, 75-3617
opening or reopening of school, basis for equalization aid, 75-3611
payment of funds to counties, 75-3616
insufficient funds for foundation program, apportionment, 75-3619
reports of state superintendent concerning aid, 75-3615
reports required of county and school officers, 75-3614
rules and regulations, 75-3614
sources of money used for aid, 75-3613
state institution employees' children attending, state payments to district, 75-3624

SCHOOLS (Continued)
Equalization aid (Continued)
state land equalization payments to counties, distribution to districts, use of proceeds, 81-1120, 81-1121
unused equalization aid, use to reduce high school levy, 75-3616
Federal funds, acceptance, deposit and expenditure, 75-5101
allocation to operating budgets, 75-1723.1, 75-4516.2
school lunch funds, 75-4802
Fines paid into county school fund, 75-3706
Foundation program, 75-3612—See also Equalization aid, above
Handicapped children
reimbursement by state for special classes, 75-5003
retarded children eligible for special education, 75-5001
special classes for educable mentally retarded children or physically handicapped children, 75-5003
transportation reimbursement not limited by restrictions on general allowances, 75-3414
tuition charges for children attending school outside district, 75-5003
Health instruction, courses and supervisor, 75-2009
High schools
abolishment of county high school
authority for abolishment, 75-4120
ballots, form, 75-4124
bonded indebtedness of high school, liquidation, 75-4134
county commissioners to submit question to voters, 75-4122
election, conduct, 75-4124
funds of high school, disposition, 75-4127
inventory and appraisement of property of abolished high school, 75-4128
petition for abolishment, filing with county clerk, 75-4121
poll books, preparation, 75-4123
publication of notice of petition and election, 75-4123
rejection of proposition by voters, waiting period before new petition, 75-4126
resolution of county commissioners after approval by voters, 75-4125
sale and conveyance of property of abolished high school, 75-4130
taxes collected after abolishment, disposition, 75-4133
additional trustees, when authorized, 75-4601
attendance outside county of residence, 75-4230
attendance outside state, 75-4146
branch of county high school
authority for establishment, 75-4138
budget for first year of operation, 75-4139
superintendent of public instruction to investigate and approve establishment, 75-4139
budget, maximum supported by tax levy, 75-4518.1
children's center inmates attending Twin Bridges high school, state payments for, 75-4230
district high schools
authority for establishment, 75-4138
budget for first year of operation, 75-4139
superintendent of public instruction to investigate and approve establishment, 75-4139
emergency budget, procedure for adoption, 75-4521
tax levy to pay emergency warrants, 75-4525
warrants against emergency budget, 75-4524
emergency relocation of building, trustees remain in office, 75-4601
examination of county free high schools, fee for, 5-906
joint high school districts authorized, procedure for formation, 75-4612
bonded indebtedness remains that of original territory, 75-4614
general school laws govern, 75-4613
junior high school, election required for establishment, 75-4202
tax necessary, computation and levy by county commissioners, 75-4516.1
reduction of levy by use of undistributed equalization aid, 75-3616

SCHOOLS (Continued)
High schools (Continued)
unification of county high school with school district
appointment of additional trustees by county superintendent, 75-4120.2
authority for unification, 75-4120
bond obligations taken over by school district, 75-4134
budget, adoption after unification, 75-4120.3
county becoming high school district after unification, 75-4120.2
election on unification, 75-4120.1
funds, disposition after unification, 75-4127
resolution of trustees requesting unification, 75-4120.1
taxes collected after unification paid to school district, 75-4133
transfer of property to school district after unification, 75-4128
conveyances and instruments of title, 75-4130
Interest and income moneys, apportionment and certification to counties, 75-1315
Isolated schools for state aid purposes, approval, 75-3617
Junior colleges subject to supervision by state board, 75-4414, 75-4429
conversion to community college district, 75-4429
Leasing of school house sites and buildings authorized, 75-3114
attorney general to examine and rule on proceedings, 75-3125
bids on leasing land, 75-3122
"building" defined, 75-3114
construction of building, terms of agreement and bids, 75-3118
election required before entering lease or agreement, 75-3119
ballots, form, 75-3120
manner of holding election, 75-3120
lease of site providing for construction of building to vest in school district at expiration of term, 75-3117
rent as obligation of district, 75-3123
resolution of intent to enter lease, 75-3122
site and plans required before entering lease or agreement, 75-3115
tax rate, authorization for increase void if lease not entered into, 75-3121
term of lease or agreement, maximum, 75-3116
Liability insurance, purchase by trustees and payment of premiums, 75-1645
Limitation on indebtedness of school districts and high school districts, XIII, 6
Nurse, employment by school board, 75-1632
Permanent school fund
investment of funds, types permitted, 81-1001
income moneys, 81-1005
sources of fund, 75-3701
subfund in trust and legacy fund, 75-3701
transfer of title of farm mortgage lands, effect, 75-3729.1
validation of conveyances of farm mortgage lands, 75-3729.1
Physician, employment by school board, 75-1632
Records, destruction when old and worthless, 59-514
fiscal records, destruction after period of years, 59-516
Research programs of state institutions, participation by governing boards, 80-1413
Retarded children, 75-5001 to 75-5007—See Handicapped children, above
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
Safety patrols, establishment authorized, 75-5401
appointment of members of patrol, 75-5402
drivers to honor stop signs and permit movement of children, 32-2177
identification and operation of patrols as prescribed by department of public instruction, 75-5404
liability not incurred by operation of patrol, 75-5403
training of patrol members provided by municipalities, 75-5405
School board meetings, mileage for attending, 75-1622
School buses
depreciation reserve, 75-3403
flashing lights required on buses, 32-21-132
use of lights when stopped or preparing to stop, 32-2197
reimbursable transportation, standards for vehicles and drivers used for, 75-1643

SCHOOLS (Continued)
School districts
annexation of districts to existing districts, procedure for, 75-1813
intercounty districts, procedure, 75-1813.1
boundary changes, when prohibited, 75-1804
child care institution, creation of district for authorized, 75-5502
application for creation of district, 75-5503
contiguous land acquired coming within district, 75-5508
disapproval of plan by county superintendent, 75-5503, 75-5506
hearing on proposal to create district, 75-5505
notice of hearing, publication, 75-5504
institutions for which district may be created, 75-5501
order of county superintendent creating district, 75-5507
plan of operation submitted with application, 75-5503
trustees of existing district, approval or disapproval by, 75-5506
trustees of new district appointed by county superintendent, 75-5507
community college districts, 75-4413 to 75-4430—See COLLEGES AND UNIVERSITIES, Community colleges
consolidated districts, procedure for formation, 75-1813
indebtedness assumed by new district, 75-1810
intercounty districts, procedure, 75-1813.1
creation of district, when prohibited, 75-1804
elections, preparation of absentee voting forms and regulations, 23-1303.1
gasoline tax exemption permits, issuance and use, 84-1802
intercounty districts, procedure for formation, 75-1813.1
interlocal co-operation, 16-4901 to 16-4904—See INTERLOCAL CO-OPERATION
investment of surplus funds, 16-2050
joint districts
budget, preparation and adoption, 75-1816
high schools, procedure for formation of joint district, 75-4612
bonded indebtedness remains that of original territory, 75-4614
general school laws govern, 75-4613
state funds paid to county treasurer, 75-1728
purchases and contracts, preference to Montana bidders
definition of residence, 82-1925
federal aid projects exempt, 82-1926
percentage differential, 82-1924
provision in contract for preference to Montana materials and labor, 82-1926
service of process on school districts, M. R. Civ. P., Rule 4 D(2)
special examination by state examiner, fee, 5-910
surplus property, lease or sale to community college, 75-4428
trustees, number authorized, 75-1802
warrants to meet deficiencies in equalization aid, 75-3621
School lunches
accounts and records, 75-4806
administration of program, 75-4803
authority of school board, 75-4805
federal funds, acceptance and deposits, 75-4802
federally connected indigent children, allocation of funds to provide for, 75-4809
State aid
equalization aid, 75-3611 to 75-3621—See Equalization aid, above
transportation costs, reimbursement, 75-3413
State board of education
donations of land for western Montana branch experiment station, authority to receive, 75-710.3
donations of money, implements, livestock, etc., for use of western Montana branch experiment station, authority to receive, 75-710.4
institutions under control and supervision of state board, 75-301
members, 75-104
officers, 75-104
powers and duties, 75-107
State land equalization payments, distribution to districts, use of proceeds, 81-1120 to 81-1121

References are to Title and Section numbers

SCHOOLS (Continued)
Superintendent of public instruction
department of public instruction created, 75-1303
salary, 25-501
Surplus property, 82-3101 to 82-3106—See STATE AGENCY FOR SURPLUS PROPERTY
Tax levies
building reserve fund, election, 75-3806
community college tax levy, 75-4425, 75-4426
county basic levy, 75-3706
distribution among school districts, 75-3618
district levy to provide foundation program, 75-3706
additional levy, adoption on approval by taxpayers, 75-3801
transportation levy, 75-3414
Teachers
administrative and supervisory certificates, 75-2516
age at which termination of services permitted or required, 75-2401
automatic re-election on failure to give notice of dismissal, 75-2401
certification
fees for certification, 75-2521
provisional certification
academic requirement for certification, 75-2516
alien, certification, 75-2501
renewal of provisional certificate, 75-2518
child abuse reports required, 10-901 to 10-905—See CHILDREN AND MINORS, Abuse of children
dismissal, notice and hearing, 75-2401
emergency authorization to teach, 75-2522
retired teachers, employment, 75-2707
retirement system
community college teachers and trustees eligible, 75-4424
contributions by employers, 75-2709
moneys collected, management and investment, 75-2708
reserve fund, inclusion in school budget, 75-2709.1
use of fund, 75-2709.2
salary on which contribution based, 75-2701
superannuation retirement allowance, 75-2707
tenure, 75-2401
Temporary quarters or portable buildings, use by schools, 75-3124
Textbooks
abridged and special edition, agreements filed with, 75-3505
bond of person offering books for adoption or sale, 75-3503
filing of textbook offered for adoption or sale, 75-3503
license to offer book for adoption or sale, fees, 75-3503
price agreements on offer of book for adoption or sale, 75-3503
Transportation of pupils
budget for transportation, preparation and adoption, 75-3414
pupils living within three miles of school, transportation authorized, 75-1641
parents, collection of costs from, 75-1641
accounting for charges, 75-1644
preference to children living farthest from school, 75-1641
routes to be used for transportation, 75-1642
standards for vehicles and drivers, 75-1643
reserve fund, 75-3414
state reimbursement of transportation cost, 75-3413
tax levy for transportation, 75-3414
Travel expenses for attendance at educational conventions, 25-508
Tuition payments for attendance outside district, 75-1630
University of Montana—See COLLEGES AND UNIVERSITIES
Vocational-technical schools, 75-4301
anticipated new schools, inclusion in budget, 75-4308
applications for admission, notice of acceptance or rejection, 75-4303
eligibility for admission to center, 75-4303

References are to Title and Section numbers

SCHOOLS (Continued)
Vocational-technical schools (Continued)
state aid, 75-4306
average number belonging, determination, 75-4305
tuition, 75-4304

SEARCH AND SEIZURE
Admissibility of articles or things seized as evidence in other proceedings, 95-718
Arrest, search and seizure authorized as incident to, 95-701
Authority to make search and seizure, 95-701
Consent of accused or other person, search and seizure authorized, 95-701
Illegally seized evidence, motion to suppress, 95-1806
Inspections granted by law, searches and seizures authorized, 95-701
Legality, when search and seizure not illegal, 95-717
Motion to suppress evidence illegally seized, 95-1806
Property or things seized
admissibility in other proceedings, 95-718
custody and disposition of things seized under warrant, 95-713
custody and disposition of things seized without warrant, 95-714
return of property seized, 95-715
return to court of things seized under warrant, 95-712
unclaimed property, disposition of, 95-716
Warrant
application, filing of, 95-706
definition, 95-703
detention and search of persons on premises, 95-710
execution, procedure, use of force, 95-708, 95-709
grounds for search warrant, 95-704
limitation on time when warrant may be executed, 95-711
scope of search, 95-705
search and seizure authorized by authority of, 95-701
service, by whom served, procedure, 95-707, 95-708
time warrant may be executed, 95-711
Without warrant, scope of search, 95-702
custody and disposition of things seized, 95-714
return of property seized, 95-715

SECRETARY OF STATE
Business corporations, powers and duties relating to—See BUSINESS CORPORATION ACT, Secretary of state
Business trusts—See BUSINESS TRUSTS, Secretary of state
Expenses paid from appropriations, 82-2212
Fees collectible, 25-102
cooperative associations, 14-201, 14-204
cooperative marketing associations, 14-422
rural electric and telephone cooperatives, 14-527
water users' association articles, filing and recording, 25-110
Lobbyist, duties concerning—See LOBBYING
Nonprofit corporations, powers and duties relating to—See NONPROFIT CORPORATION ACT, Secretary of state
Religious corporation sole
articles of incorporation, filing with secretary of state, 15-2404
certificate of incorporation, issuance by secretary of state, effect, 15-2405
Salary, 25-501
Service of process on secretary of state as agent, M. R. Civ. P., Rule 4D(6)

SECURED TRANSACTIONS
Acceleration of performance, good faith required in exercising option, 87A-1-208
Accessions to property, conflicting security interest in, 87A-9-314
Accounts sold as part of business, exclusion from chapter, 87A-9-104
After-acquired collateral
new value, when considered to have been given by secured party, 87A-9-108
time of attachment of security interest to, 87A-9-204

References are to Title and Section numbers

SECURED TRANSACTIONS (Continued)

Agreement for security interest
contents required, 87A-9-203
effect of agreement against parties, purchasers and creditors, 87A-9-201
required for enforceability of security interest, 87A-9-203
Agreement to subordinate prior interest, 87A-9-316
Antecedent debt secured by after-acquired collateral, when debt secured not considered antecedent, 87A-9-108
Assignment of collateral for benefit of creditors of debtor—See Lien adverse to security interest, below
Assignment of security interest, filing not required to continue perfected interest, 87A-9-302
Attachment of collateral by third party—See Lien adverse to security interest, below
Attachment of security interest, requirements for, 87A-9-204
Authenticity of third-party documents presumed, 87A-1-202
Bank accounts excluded from chapter, 87A-9-104
Bankruptcy of debtor, status of trustee—See Lien adverse to security interest, below
Bulk Transfer chapter, secured transactions not subject to, 87A-6-103, 87A-9-111
Care required by secured party in possession of collateral, 87A-9-207
Certificate of title indicating security interest, conflict of laws, 87A-9-103
Citation of Uniform Commercial Code chapter, 87A-9-101
Claim against seller or lessor, waiver by buyer or lessee against assignee, 87A-9-206
Claims of account debtor against creditor, assertion against assignee of account, 87A-9-318

Collateral to secure debt
after-acquired collateral, time of attachment to, 87A-9-204
list of collateral supplied by secured party to debtor, 87A-9-208
owner of collateral other than debtor, rights and immunities, 87A-9-112
possession of collateral by secured party, rights and duties of parties, 87A-9-207
proceeds of disposition of collateral, attachment of security interest to, 87A-9-306
release of collateral, filing, 87A-9-406
title immaterial in applying chapter, 87A-9-202
transfer of debtor's rights in collateral, 87A-9-311
use of collateral by debtor, effect of agreements permitting, 87A-9-205
use of collateral by secured party in possession, 87A-9-207

Collection, assignment of accounts for excluded from chapter, 87A-9-104
Collection of assigned accounts by debtor, effect of agreement permitting, 87A-9-205
Commercial Paper chapter subject to Secured Transactions chapter, 87A-3-103
Commingled goods, conflicting security interest in, 87A-9-315
Commingling of collateral by debtor, effect of agreements permitting, 87A-9-205
Conflict of laws, 87A-9-103
restriction on agreement as to applicable law, 87A-1-105

Consumer Loan Act, application to transactions, 87A-9-203
Course of dealing between parties, application, 87A-1-205
Creditors, effect of security agreement against, 87A-9-201

Default by debtor
attorney fee to be allowed in foreclosure action, 93-8613
collection on accounts or instruments by secured party, 87A-9-502
deficiency in collateral, liability of debtor, 87A-9-504
collections on accounts or instruments by secured party, 87A-9-502
disposition of collateral by secured party, 87A-9-504
compulsory disposition, 87A-9-505
price at which sale made, reasonableness, 87A-9-507
judgment for secured party, relation back of judgment lien, 87A-9-501
liability of secured party for noncompliance with requirements, 87A-9-507
possession of collateral taken by secured party, 87A-9-503
purchase by secured party at sale of collateral, 87A-9-504
real property included in security agreement, remedies available, 87A-9-501
redemption by debtor after default, 87A-9-506
remedies available to debtor, 87A-9-501
remedies available to secured party, 87A-9-501
retention of collateral by secured party in satisfaction of debt, 87A-9-505
sale of collateral by secured party, 87A-9-504
compulsory sale, 87A-9-505

References are to Title and Section numbers

SECURED TRANSACTIONS (Continued)
Default by debtor (Continued)
sale of collateral by secured party (Continued)
judicial sale, right of secured party to purchase at, 87A-9-501
postponement of sale, 52-313
price at which sale made, reasonableness, 87A-9-507
report of sale, filing and recording, 52-314
sheriff making seizure and sale, 52-312
time of sale, 52-313
subrogation of guarantor or endorser to rights of secured party, 87A-9-504
surplus proceeds of collateral, disposition, 87A-9-504
collections on accounts or instruments by secured party, 87A-9-502
waiver of certain rights of debtor prohibited, 87A-9-501
Defenses against seller or lessor, waiver by buyer or lessee against assignee, 87A-9-206
Defenses available to account debtor against assignee of account, 87A-9-318
Definition of terms, 87A-9-105
"account," 87A-9-106
"consumer goods," 87A-9-109
"contract right," 87A-9-106
"equipment," 87A-9-109
"farm products," 87A-9-109
general definitions in Uniform Commercial Code, 87A-1-201
"general intangibles," 87A-9-106
index of definitions, 87A-9-105
"inventory," 87A-9-109
"purchase money security interest," 87A-9-107
Description of property, sufficiency, 87A-9-110
Disposal of collateral by debtor, effect of agreement permitting, 87A-9-205
Effectiveness of security agreement among parties, 87A-9-201
Exclusion of transactions from chapter, 87A-9-104
Federally governed security interests excluded from chapter, 87A-9-104
Filing of financing statement
acts constituting filing, 87A-9-403
amendments to statement, effective date, 87A-9-402
assignment of security interest or rights under financing statement, 87A-9-405
filing not required to continue perfected status, 87A-9-302
change of debtor's address or location of collateral, effect, 87A-9-401
conflict of laws, 87A-9-103
contents of statement required, 87A-9-402
continuation statements, manner of filing and effect, 87A-9-403
destruction of record permitted after lapse of time, 59-516.1
duration of effectiveness of filing, 87A-9-403
erroneous filing in improper place, effect, 87A-9-401
fees chargeable for filing, 87A-9-403
assignment of security interest, filing, 87A-9-405
information, fees chargeable for furnishing, 87A-9-407
release of collateral, filing, 87A-9-406
termination statement, 87A-9-404
formal requisites of statement, 87A-9-402
future goods, application of financing statement to, 87A-9-402
indexing of statements, 87A-9-403
information furnished from files, 87A-9-407
lapse of security interest on expiration of period for which filing effective, 87A-9-403
numbering of statement, 87A-9-403
out-of-state transactions filed in this state, 87A-9-103
period for which retained, 59-516.1
place of filing, 87A-9-401
public inspection, statement held for, 87A-9-403
public utility statement, contents and place of filing, 87A-9-302.2
definition of terms, 87A-9-302.1
Uniform Commercial Code applicable, 87A-9-302.3
purchase money security interest, time allowed for filing, 87A-9-301
release of collateral, filing, 87A-9-406

References are to Title and Section numbers

SECURED TRANSACTIONS (Continued)
Filing of financing statement (Continued)
required for perfection of security interest, exceptions, 87A-9-302
signature affixed to statement, 87A-9-402
statutory registration systems, interests in property subject to, 87A-9-302
termination statement, furnishing and filing, 87A-9-404
Fixtures, priority of security interest in, 87A-9-313
Foreclosure of security interest
joinder with action for recovery of possession, 52-312
proceedings as in foreclosure of real estate mortgage, 52-312
seizure and sale by sheriff
authority in security agreement for seizure, 52-312
indemnity bond to sheriff given by secured party, 52-312
postponement of sale, 52-313
report of sale, filing and recording, 52-314
time of sale, 52-313
Future advances, coverage by security agreement, 87A-9-204
Good faith required, 87A-1-203
Illegal transactions not validated by chapter, 87A-9-201
Insolvency of debtor, attachment of security interest to proceeds of disposition of collateral, 87A-9-306
Installment sales act unaffected by chapter, 87A-9-201
Insurance policy interest, transfer excluded from chapter, 87A-9-104
Judgment rights excluded from chapter, 87A-9-104
Landlord's lien excluded from chapter, 87A-9-104
Lien adverse to security interest
attachment of collateral by third party, method of levy, 93-4338
priority over security interest of liens in ordinary course of business, 87A-9-310
subordination of unperfected security interest to prior lien, 87A-9-301
Livestock as collateral, 52-319 to 52-323, 87A-9-203
collection of debt, officers not responsible for, 52-323
contents of notices filed, 52-320
fees chargeable for filing, disposition, 52-322
filing with recorder of marks and brands, 52-319
satisfaction of agreement, duty to file, 52-321
Manufactured products, security interest in material attaching to, 87A-9-315
Mechanic's and materialman's lien excluded from chapter, 87A-9-104
Modification of contract after assignment of account receivable, effect as against assignee, 87A-9-318
Motor vehicles, security interest in, 53-110
Negotiable instrument signed by buyer with security agreement, effect, 87A-9-206
Notification to account debtor of assignment of account receivable, 87A-9-318
Pawnbroker law, application to transactions, 87A-9-203
Perfection of security interest
bailed goods, perfection of interest in, 87A-9-304
chattel paper, means of perfection, 87A-9-304
continuity of perfected status under different means of perfection, 87A-9-303
filing necessary to perfect interest, 87A-9-302—See also Filing of financing statement, above
instruments, security interest in, 87A-9-304
negotiable documents, interest in, 87A-9-304
possession by secured party as means of perfection, 87A-9-305
priority between interests governed by time of perfection, 87A-9-312
purchase money security interest, time allowed for filing, 87A-9-301
statutory registration systems, property subject to, 87A-9-302
time of perfection, 87A-9-303
Possession of collateral by secured party, rights and duties of parties, 87A-9-207
perfection of security interest by possession, 87A-9-305
security interest supported by possession, 87A-9-203
Preservation of collateral by secured party in possession, 87A-9-207
Priorities among conflicting security interests in same collateral, 87A-9-312
fixtures, 87A-9-313
Proceeds of disposition of collateral, attachment of security interest to, 87A-9-306

SECURED TRANSACTIONS (Continued)
Processed goods, security interest in, 87A-9-315
Purchase money security interest governed by chapter on sales, 87A-9-206
priority as against other security interests, 87A-9-312
time allowed for filing of financing statement, 87A-9-301
Purchaser of collateral, effect of security agreement against, 87A-9-201
chattel paper purchaser, priority as against security interest, 87A-9-308
consumer goods purchaser taking free of security interest, 87A-9-307
farm equipment purchaser taking free of security interest, 87A-9-307
negotiable instrument or document, rights of holder in due course against security interest, 87A-9-309
nonnegotiable instrument purchaser, priority as against perfected security interest, 87A-9-308
ordinary course of business buyer taking free of security interest, 87A-9-307
Railway rolling stock equipment trusts excluded from chapter, 87A-9-104
Raw material, security interest attaching to finished product, 87A-9-315
Real estate interests excluded from chapter, 87A-9-104
Real property included in security agreement, remedies available on default of debtor, 87A-9-501
Redemption of collateral by debtor after default, 87A-9-506
Repossession of goods by seller of account receivable, attachment of account buyer's interest to goods, 87A-9-306
Reservation of rights by party while performing or accepting performance, 87A-1-207
Retail Installment Sales Act, application to transactions, 87A-9-203
Sale of goods, application of chapter to security interest arising under, 87A-9-113
Sales chapter inapplicable to transactions, 87A-2-102
Scope of Uniform Commercial Code chapter, 87A-9-102
Setoff rights excluded from chapter, 87A-9-104
Short title of Uniform Commercial Code chapter, 87A-8-101
Small loans laws unaffected by Secured Transactions chapter, 87A-9-201
Statement of account by secured party to debtor, 87A-9-208
Statutory liens, chapter inapplicable, 87A-9-102
Subordination of priority by agreement, 87A-9-315
Subordination of unperfected security interest to prior lien, 87A-9-301
Time allowed for required actions, 87A-1-204
Time of attachment of security interest, 87A-9-204
Title to collateral immaterial in applying chapter, 87A-9-202
Tort claims excluded from chapter, 87A-9-104
Transfer of debtor's rights in collateral, 87A-9-311
Usage of trade, application, 87A-1-205
Use of collateral by debtor, effect of agreements permitting, 87A-9-205
secured party not liable for debtor's acts or omission in use, 87A-9-317
Use of collateral by secured party in possession, 87A-9-207
Usury laws unaffected by chapter, 87A-9-201
Wage assignments excluded from chapter, 87A-9-104
Waiver of certain rights of debtor prohibited, 87A-9-501
Warehouseman reserving security interest in goods covered by warehouse receipt, 87A-7-209

SECURITIES REGISTRATION
See also INVESTMENT SECURITIES, 87A-8-101 to 87A-8-406
Accountant excluded from definition of "investment adviser," 15-2004
Annuity contracts excluded from definition of "security," 15-2004
Attorneys excluded from definition of "investment adviser," 15-2004
Bank securities exempt, 15-2013
Banks excluded from definition of "investment adviser," 15-2004
Bonds included in definition of "security," 15-2004
Bonuses construed as sales, 15-2004
Broker-dealers
definition, 15-2004
fees payable for registration, 15-2016
records and accounts required, 15-2006
registration required, procedure, 15-2006

References are to Title and Section numbers

SECURITIES REGISTRATION (Continued)
Broker-dealers (Continued)
service of process on dealer, 15-2015
suspension or revocation of registration, 15-2006
Building and loan securities exempt, 15-2013
Burden of proof as to exemption, 15-2025
Carrier securities, when exempt from registration, 15-2013
Certificates of deposit included in definition of "security," 15-2004
Citation of act, 15-2002
Civil liability for unlawful acts and practices, 15-2022
Collateral-trust certificates included in definition of "security," 15-2004
"Commissioner" defined, 15-2004
Coordination, registration by
contents and filing of statement, 15-2009
stop order on failure to file price amendment, 15-2009
time registration effective, 15-2009
Copies of documents filed, availability to public, 15-2024
Criminal liability, 15-2021
Damages, measure of civil liability, 15-2022
Debentures included in definition of "security," 15-2004
Definition of terms, 15-2004
Denial of registration, grounds and procedure, 15-2012
Effect of registration, 15-2011
Employee benefit plans, exemption of investment contracts in connection with, 15-2013
Engineers, exclusion from definition of "investment adviser," 15-2004
Escrow deposits of securities to be issued to promoters, 15-2011
Evidences of indebtedness included in definition of "security," 15-2004
Exchange-listed securities, exemption, 15-2013
Exempt securities, 15-2013
Exempt transactions, 15-2014
Expenses of investigation, payment by issuer or broker-dealer, 15-2024
False and misleading statements filed unlawful, 15-2017
Federal statutes defined, 15-2004
Fees payable for registration and certificates, 15-2016
disposition of moneys received, 15-2024
Forms prescribed by commissioner, 15-2024
Fraudulent practices prohibited, 15-2005
Gift of assessable stock construed as offer and sale, 15-2004
Good faith conformity exempt from liability, 15-2024
Governmental securities exempt, 15-2013
"Guaranteed" defined, 15-2004
Impounding of proceeds of sale, 15-2011
Incorporation of documents by reference in registration statement, 15-2011
Information confidential, 15-2024
Injunction against unlawful acts and practices, 15-2020
Insurance companies excluded from definition of "investment adviser," 15-2004
Insurance policies excluded from definition of "security," 15-2004
Insurance policies exempt, 15-2013
Investigation by investment commissioner, 15-2019
Investment advisers
assignment of contract, consent required, 15-2005
compensation of adviser, prohibited provisions, 15-2005
contracts, required provisions, 15-2005
definition, 15-2004
fees payable for registration, 15-2016
partnership changes, notice required, 15-2005
records and accounts required, 15-2006
registration required, procedure, 15-2006
service of process on adviser, 15-2015
suspension or revocation of registration, 15-2006
Investment commissioner
administration of act, 15-2024
enforcement powers, 15-2019, 15-2020
office created, 15-2001

SECURITIES REGISTRATION (Continued)
Investment contract included in definition of "security," 15-2004
Isolated transactions, exemption, 15-2014
"Issuer" defined, 15-2004
Joint liability for damage from unlawful practices, 15-2022
Judicial sales, exemption, 15-2014
Methods of registration enumerated, 15-2007
Mining interests included in definition of "security," 15-2004
Misleading statements as to effect of registration unlawful, 15-2018
"Non-issuer" defined, 15-2004
Non-issuer transaction, when exempt, 15-2014
Non-profit corporations, exemption of securities, 15-2013
Notes included in definition of "security," 15-2004
Notification, registration by
    contents and filing of statement, 15-2008
    eligibility of securities for registration by notification, 15-2008
    time of effectiveness of registration, 15-2008
"Offer" defined, 15-2004
Oil and gas interests included in definition of "security," 15-2004
Participation certificates included in definition of "security," 15-2004
Penalties for violation, 15-2021
"Person" defined, 15-2004
Pledgee, exemption of sales by, 15-2014
Pre-organization certificates and subscriptions included in definition of "security," 15-2004
Private offerings, exemption, 15-2014
Profit-sharing agreements, certificates included in definition of "security," 15-2004
Public hearings required, 15-2024
Public utility securities, when exempt, 15-2013
Publishers excluded from definition of "investment adviser," 15-2004
Qualification, registration by
    contents and filing of statement, 15-2010
    prospectus, required contents, 15-2010
    time registration effective, 15-2010
Register of applications and statements open for inspection, 15-2024
Reorganization issues, exemption, 15-2014
Reports to be filed with commissioner after registration of securities, 15-2011
Review of orders of commissioner, 15-2023
Revocation of registration, grounds and procedure, 15-2012
Rules, adoption by commissioner, 15-2024
"Sale" defined, 15-2004
Sale of unregistered securities prohibited, 15-2007
Salesmen
    association with issuer or broker-dealer required, 15-2006
    bond required for registration, 15-2006
    definition, 15-2004
    fee for registration, 15-2016
    registration required, procedure, 15-2006
    service of process on salesmen, 15-2015
Savings institutions excluded from definition of "investment adviser," 15-2004
Securities exempt, 15-2013
"Security" defined, 15-2004
Service of process on registrant or issuer, 15-2015
Short-term obligation, exemption, 15-2013
"State" defined, 15-2004
Statement for registration, by whom filed, 15-2011
Stock dividends, exemption, 15-2014
Subpoena powers of investment commissioner, 15-2019
Suspension of registration, grounds and procedure, 15-2012
    federal suspension or stop order, automatic suspension on, 15-2011
Teachers, exclusion from definition of "investment adviser," 15-2004
Title of act, 15-2002
Treasury stock included in definition of "security," 15-2004

SECURITIES REGISTRATION (Continued)
Trust companies excluded from definition of "investment adviser," 15-2004
Underwriter purchases, exemption, 15-2014
Uniformity of construction of act, 15-2003
Unsolicited offers, exemption, 15-2014
Voting-trust certificates included in definition of "security," 15-2004
Warrant to purchase security construed as offer, 15-2004
Withdrawal of registration, registration statement, 15-2011

SEEDS
Agricultural seeds, labeling, 3-802
Vegetable and flower seeds
inspection by director of grain laboratory, 3-817
labeling required, 3-816
penalty for violations, 3-819
prohibited practices, 3-818
report to commissioner of violations, 3-817
stop sale orders, 3-817
weed seeds prohibited and restricted, 3-816

SENTENCES
See CRIMINAL PROCEDURE, Sentence and judgment
Appellate review of legal sentences, 95-2501 to 95-2530
Commutation of prison sentence to commitment to juvenile facilities, 80-2210
Good time allowance to prison inmates, 80-1905
Post-conviction hearing, 95-2601 to 95-2608
Western Interstate Corrections Compact, 95-2308 to 95-2312

SEPTIC TANKS
Cleaning of septic tanks, 69-5401 to 69-5408—See SANITARY LICENSEES

SERVICE OF PROCESS
Affidavit of service, M. R. Civ. P., Rule 4 D(9)
Attorney general, service upon in tort actions against state, 83-704
Attorney, service on, M. R. Civ. P., Rule 5(b)
Continuance to allow opportunity to defend, M. R. Civ. P., Rule 4 D(6)(b)
Criminal procedure, summons, definition, issuance, form and service, failure to appear, 95-601, 95-612, 95-613
Delivery of copy, manner of making, M. R. Civ. P., Rule 5(b)
Fraternal benefit societies, service through commissioner of insurance, 40-5352
Industrial accident board under occupational disease act, service of process on, 92-1344
Insurers, service through commissioner of insurance, 40-2818
proceedings after service, 40-2819
Jurisdiction of person acquired by service, M. R. Civ. P., Rule 4 B(2)
Justices' court, service of summons, 93-6711
Milk control board, method of serving, 27-429
Motions, when service required, M. R. Civ. P., Rule 5(a)
Motion to raise insufficiency, M. R. Civ. P., Rule 12(b)
Numerous defendants, service on, M. R. Civ. P., Rule 5(c)
Orders, when service required, M. R. Civ. P., Rule 5(a)
Personal service outside state, M. R. Civ. P., Rule 4 D(3)
Personal service within state, M. R. Civ. P., Rule 4 D(2)
Persons by whom served, M. R. Civ. P., Rule 4 D(1)
Pleadings, when service required, M. R. Civ. P., Rule 5(a)
Proof of service, M. R. Civ. P., Rules 4 D(8), 5(f)
amendment of proof, M. R. Civ. P., Rule 4 D(7)
Publication, service by, M. R. Civ. P., Rule 4 D(5)
Real estate brokers residing outside state, service through real estate commission, 66-1936
Sanitarians registration council, service on, 69-3409
Secretary of state, service through, M. R. Civ. P., Rule 4 D(6)
Securities act registrant or issuer, service on, 15-2015
Sheriffs and deputies to serve process, M. R. Civ. P., Rule 4 D(1)

SERVICE OF PROCESS (Continued)
Subpoena, service, M. R. Civ. P., Rule 45(c)
Third parties, service on, M. R. Civ. P., Rule 14(a)
Time allowed for proceedings after service by mail, M. R. Civ. P., Rule 6(e)
Unauthorized insurers, service on
attorney's fee, when included in judgment, 40-3408
citation of act, 40-3403
commissioner as agent for process, 40-3404
default judgment, when allowed, 40-3405
defense of action, 40-3407
exemptions from service of process provisions, 40-3406
motion to quash or set aside service, 40-3407
procedure for service, 40-3405
uniformity of interpretation of act, 40-3403
Unit ownership property, service with respect to, 67-2338
agent to receive service named in declaration, 67-2314
change of agent to receive process, 67-2339

SETOFF
Assignments excluded from Uniform Commercial Code, 87A-9-104

SEWAGE DISPOSAL
Classification of waters for industrial use, criteria, 69-4803
Definition of terms, 69-4802
Domestic water supply, protection, 69-4901 to 69-4908—See WATER SUPPLY, Domestic water supply
Permit required for sewage disposal system, 69-4806
plans and specifications to be filed before permit issued, 69-4807
revocation of permit for violations, 69-4807
state department functions with respect to permits, 69-4809
Policy of state, 69-4801
Privately owned waters, chapter not applicable to, 69-4804
Subdivision plans subject to sanitary restriction, 69-5003
definition of "subdivision," 69-5002
plat of subdivision not to be filed unless in compliance, 69-5004
policy of state, 69-5001
rules and standards for enforcement of requirements, 69-5005

SHERIFFS
Accident report forms for motorboat or vessel accidents, 69-3512
Arrest, sheriffs privileged from arrest, when, 95-616
Deputies, qualifications of, 16-3705
Fingerprints taken on felony arrest, 80-2003
salary withheld on failure to furnish information, 80-2004
Fish and game laws, enforcement by sheriffs, 26-114
Identification bureaus, assistance by state bureau in establishing, 80-2006
Law enforcement teletypewriter communications committee, membership on, 82-3902
Medical expense for prisoners, reimbursement, 16-2818
Practice of law by sheriff, restrictions on, 93-902
Salaries, establishment before election, 25-609
Service of process by sheriffs, M. R. Civ. P., Rule 4 D(1)
Summoning of jurors, 93-1509
Work release program for prisoners, duties, 95-2216

SHODDY
Condemnation of mattresses in violation, 69-4706
Definition of "mattress," 69-4701
Inspections by health authorities, 69-4705
Label required on each mattress, 69-4702
Prohibited acts, 69-4703
separate offense for each mattress made or sold, 69-4707
Rules and standards of state board, 69-4704

References are to Title and Section numbers

SHOOTING PRESERVES
See FISH AND GAME, Shooting preserves, 26-1601 to 26-1614

SIDEWALKS
Municipal construction without special improvement district, 11-2226

SIGNATURES
Facsimile signatures of public officials—See PUBLIC OFFICERS AND EMPLOYEES, Facsimile signatures of public officials

SLANDER
Notice to publisher or broadcaster and opportunity to correct, 64-207.1

SMALLPOX
Vaccination required for school attendance, 69-4515

SMALL TRACT FINANCING ACT
See TRUST INDENTURES, 52-401 to 52-417

SOIL AND WATER CONSERVATION
Citation of act, 76-101
Corrective methods, declaration of policy, 76-102
Legislative policy, 76-102
Soil and water conservation districts
- assessments and funds
  - certification of assessment to county assessor, 76-211
  - collection of tax, application of general law, 76-212
  - depository of funds of district, 76-215
  - division between counties of amount to be raised by assessment, 76-205
  - entry of assessment on assessment roll, 76-211
  - estimate by supervisors of amount to be raised by assessment, 76-204
  - expenses covered by estimates, 76-206
  - general law on levy and collection, application to assessments, 76-212
  - levy of assessment by county commissioners, 76-209
  - liability of officers on official bonds, 76-212
  - maximum income from levy, 76-209
  - maximum regular assessments, 76-208
  - notice of organization of district filed with county clerk, 76-201
    - copies of notice transmitted to county commissioners, 76-202
  - payment of district moneys on order by supervisors, 76-217
  - "principal county" defined, 76-213
  - purpose of expenditures, 76-219
  - rate of assessment, computation, 76-210
  - receipt and crediting of district funds by treasurer of principal county, 76-216
  - regular assessments defined, 76-207
  - report by treasurer to supervisors, 76-218
  - settlements and payments by county treasurers other than of principal county, 76-214
- body corporate, district constitutes, 76-108
- chairman, 76-107
- change of name, procedure, 76-117
- combination of districts, 76-117
- creation of districts, 76-105
  - notice of organization filed with county clerk, 76-201
    - copies of notice transmitted to county commissioners and assessor, 76-202
- definition of terms, 76-103
- division of districts, 76-117
- employees, 76-107
- flood control measures, 76-108
- powers, enumeration, 76-108
- supervisors, number, 76-107
  - term of office, 76-107
  - vacancy among, filling, 76-107

Water resources board, establishment, members, 89-103—See WATER RESOURCES BOARD

References are to Title and Section numbers

SOLDIERS AND SAILORS
See MILITIA AND MILITARY; VETERANS

STATE AGENCY FOR SURPLUS PROPERTY
Cost of operation, payment from receipts from sales, 82-3104
Rebate of surplus funds, 82-3104

STATE AUDITOR
Assignment of claims against state
effect of assignment, 83-904
limitations on assignment, 83-902
notice to auditor, 83-901
rules promulgated by auditor, 83-903
Insurance commissioner ex officio, 40-2701
Investment commissioner ex officio, 15-2001
Salary, 25-501
Warrants, order in which drawn, 79-104

STATE BOARD OF EQUALIZATION
See TAXATION, State board of equalization

STATE BOARD OF HEALTH
See DEPARTMENT OF HEALTH, Board of health

STATE CAPITOL
Budget requests for maintenance, repair, replacement, renewal and additions to state buildings, 82-3309
Building improvement and repair
bonds, indentures and notes, issuance authorized, 78-737
registration of instruments, 78-742
sale of instruments, 78-742
terms of instruments, 78-741
borrowing power of board of examiners, 78-737
maximum amount, 78-740
contracts for work authorized, 78-739
employment of architects and engineers authorized, 78-738
legislative areas, consultation with legislative council, 78-746
repayment of obligations, funds available for, 78-743
budget act inapplicable to appropriations, 78-745
sinking fund, deposit of moneys in, 78-744
Building program, scheduling to minimize effects of weather on construction and work opportunities, 78-910
Controller and department of administration to oversee property in capitol area, 82-3309, 82-3310
Custodian, office abolished, 82-3322
Emergency temporary seat of government in event of enemy attack, designation, method, 82-1310
Handicapped persons to be accommodated in construction, 69-3701 to 69-3719—See PUBLIC BUILDINGS, Handicapped persons, construction of buildings to accommodate
Insurance proceeds from damaged state buildings, deposit and use, 78-1101
Land grants for capitol building
dedication of funds accumulated, 78-503
deposit of revenue in federal and private revenue fund, 78-501
income dedicated to repayment of improvement and repair bonds, indentures and notes, 78-743
Long-range building program financing
bonds authorized, form, contents and terms, 79-2202
amount of authorization, 79-2205
definition of terms, 79-2201
fiscal agent to assist state board of examiners, 79-2202
referendum on tobacco tax, 79-2203
refunding bonds authorized, 79-2203
sinking fund account, sources and use of funds, 79-2203

STATE CAPITOL (Continued)
Long-range building program financing (Continued)
taxes pledged to sinking fund, 79-2203
waiver of security provisions by bondholders, 79-2204
Unemployment compensation commission building
architect, employment, 78-1002
bids for construction, 78-1003
bond issue authorized, 78-1001
bonds
amount authorized, 78-1004
interest, 78-1005
interest and sinking fund, 78-1008
principal and interest, payment, 78-1007
provisions, 78-1005
purchase by state board of land commissioners, 78-1009
registration, 78-1006
sale, 78-1006
term, 78-1005
budget act inapplicable, 78-1010
contractor's bond, 78-1003
location, 78-1001
Veterans' and pioneers' memorial, purpose and use, 78-202
historical society and library, fittings and furnishings, 44-526
moneys available for expenditure in, 78-302
War, moving seat of state government, V, 46; 82-3807

STATE CONTROLLER
Appointment, 82-106
Building program of state, scheduling to minimize effects of weather on construction and work opportunities, 78-910
Claims against the state, processing, 82-109.1 to 82-109.4—See PUBLIC FINANCE, State finance
Department of administration, 82-3301 to 82-3322—See DEPARTMENT OF ADMINISTRATION
Duties, 82-109
Examination into audits and reports, 82-110
Expenditure control, 82-109
Oath of office, 82-107
Qualifications, 82-106
Reports to governor and legislature, 82-3305
Surplus property of state, power to dispose of, 82-1914
Treasury fund accounts, creation and abolition, 79-413
records of funds and accounts maintained by controller, 79-414
Uniform accounting system, 82-110

STATE DEPARTMENTS AND BOARDS
Facsimile seal, use authorized, 59-1303
Interlocal co-operation, 16-4901 to 16-4904—See INTERLOCAL CO-OPERATION
Open meetings of public agencies
legislative intent, 82-3401
meetings to be open, exceptions, 82-3402
minutes to be available for public inspection, 82-3403
Service of process on state boards or agencies, M. R. Civ. P., Rule 4 D(2)(h)

STATE ENGINEER
Funds and appropriations transferred to water conservation board, 89-103.6
Powers transferred to water conservation board, 89-103.4
Records and property transferred to water conservation board, 89-103.5

STATE ENTOMOLOGIST
Appointment and qualifications, 82-804.1
Biennial report required, contents, 82-804.3
Duties, 82-804.2
Expenses, appropriations for, payment, 82-804.4

References are to Title and Section numbers

STATE EXAMINER

Audit of extracurricular funds of schools, 75-1632
Banks, investment companies and trust companies, fee for examination, 5-908
Building and loan associations, fee for examination, 5-909
Cities and towns, examination of, fee, 4-905, 82-1008
Claims against state, assignment of, duties of state auditor, 83-901 to 83-904
Counties, fee for examination, 5-904
County free high schools, fee for examination, 5-906
Irrigation districts
  fee for examination, 5-907
  joint operations, examination by state examiner, 89-1215
Salary and reimbursement of expenses, 82-1011
School districts, examination of, 82-1008
Special examinations, fee, 5-910
Vehicle equipment safety commission accounts, inspection by examiner, 32-21-174

STATE INSTITUTIONS

Advisory committees for institutions, appointment by warden or superintendent, 80-1406
Agricultural programs for treatment or rehabilitation, 80-1405
Boulder river school and hospital, 80-2301 to 80-2312—See BOULDER RIVER SCHOOL AND HOSPITAL
Budget requests, review and approval by board, 80-1405
Center for the aged, 80-2501 to 80-2503—See CENTER FOR THE AGED
Children's center, 80-2101 to 80-2107—See CHILDREN'S CENTER
Cost of support of residents
  action for collection of costs, 80-1604
  application to pay less than established charge, investigation and determination, 80-1603
  definition of terms, 80-1602
  deposit of receipts in state treasury, 80-1603
  financial ability of resident or responsible person, investigation, 80-1603
  Indian residents, assessment against Federal government, 80-1603
  institution subject to per diem charge, enumeration, 80-1601
  lien of judgment or claim on property of responsible person, 80-1604
  monthly assessment of charges against resident or responsible person, 80-1603
  rate of per diem, annual recomputation, 80-1603
Department of institutions
  board of institutions, qualifications and appointment, 80-1407
    compensation and reimbursement of board members, 80-1408
    function of board in general, 80-1409
    meetings of board, 80-1409
    officers of board, 80-1408
    quorum of board, 80-1409
  council of superintendents, 80-1406
  definition of terms, 80-1402
  director, qualifications, appointment and duties, 80-1404
  division of mental hygiene
    powers and duties of division, 80-2403
    state hospital in division, 80-2401
    supervisor of division, 80-2402
  division of mental retardation, 80-2302
  employees of department, appointment, 80-1404
  institutions subject to control by department enumerated, 80-1403
  juvenile correctional facilities, establishment, control and management, 80-1410 to 80-1412—See Juvenile facilities, below
  powers and duties of board in general, 80-1405
  purpose of department, 80-1401
  reports of board to governor and legislative assembly, 80-1405
  superintendents and wardens, appointment by board, 80-1405
    duties of warden and superintendents, 80-1406
Employment of personnel at institutions, 80-1406
Examination of accounts by state examiner, 82-1014
Galen state hospital, 80-1701 to 80-1704—See GALEN STATE HOSPITAL

STATE INSTITUTIONS (Continued)
Industrial activities permitted, 80-1501
contract labor arrangements prohibited, 80-1503
exchange of products with other states prohibited, 80-1503
payments to prison inmates permitted, 80-1501
public sale of products prohibited, 80-1503
receipts from sale of goods, disposition, 80-1502
Juvenile facilities
absentee from facilities, apprehension and return, 80-2211
penalty for aiding residents to leave facility, 80-2212
age of child for commitment, 80-2204
control and management of correctional centers, 80-1411
curriculum of instruction, standards and subjects included, 80-2203
establishment by department, 80-1410
expense of commitment and transportation, 80-2206
Galen State Hospital, juvenile reception and evaluation center, 80-1704
industrial activities permitted, 80-1501 to 80-1503—See Industrial activities permitted, above
institutions in department, 80-1403
medical examination before commitment, 80-2205
physical education building at Pine Hills School, construction and retirement of bonds, 80-2207
prison sentence, commutation to commitment to department of institutions, 80-2210
records and reports to accompany child committed, 80-2205
special programs, 80-1411
superintendents to manage facilities, 80-2202
support and maintenance costs at Pine Hills School, payment by county or federal government, 80-2207
transfer of child from children's center, 80-2105
transfer to other facilities or institutions, 80-2209
transportation to school, 80-2206
truants, commitment to facilities, 75-3002
university aid to residents, 80-2213
youth forest camp, work program, 80-1412
Lands for use of institutions, lease or purchase, 80-1405
Legislative consent required to move, discontinue or abandon institution, 80-1403
Legislative proposals for long-range programs, 80-1405
Mental health centers in Miles City and Glasgow, staffing, supervision by board of institutions, 80-2410, 80-2411
Mental health programs controlled through division of mental hygiene, 80-2405—See INSANE AND MENTALLY ILL, Division of mental hygiene
Mental retardation center at Glendive, 80-2310 to 80-2312
Prison, 80-1901 to 80-1908—See PRISONS AND PRISONERS, State prison
Pulmonary disease hospital, 80-1701 to 80-1704—See GALEN STATE HOSPITAL
Research programs, participation by governing boards of institutions, 80-1413
Rules and regulations for government of institutions, 80-1405
Schools attended by children of institutional employees, state payments to district, 75-3624
State hospital, 80-2401 to 80-2411—See WARM SPRINGS STATE HOSPITAL
State training school and hospital, 80-2301 to 80-2312—See BOULDER RIVER SCHOOL AND HOSPITAL
Superintendents and warden, appointment and discharge, 80-1404
powers and duties in general, 80-1406
University facilities, utilization by institutions, 80-1405
Veterans' home, 80-1801 to 80-1804—See VETERANS, Home for veterans
Warm Springs state hospital, 80-2401 to 80-2411—See WARM SPRINGS STATE HOSPITAL

STATE LANDS
Brush disposal on state lands, 81-1601
Commissioner of state lands and investments, compensation, 81-209
Definition of terms relating to, 81-102
Development of resources, 81-2401 to 81-2408—See Resource development, below

References are to Title and Section numbers

STATE LANDS (Continued)
Equalization payments to counties
claim for payments filed by commissioner, 81-1118
computation of payments to counties, 81-1116
county distribution of payments, 81-1120
form for computing payment completed by county assessor, 81-1117
examination by commissioner, 81-1118
school district use of payments, 81-1121
statement transmitted to county assessors, 81-1115
warrant for payments to counties issued by controller, 81-1119
Federal installations and facilities donated, acceptance by board of examiners, 81-1101.1
Fees chargeable by commissioner of state lands and investments, 81-1113
Forests
conservation appropriations and allotments, receipt by state treasurer, 81-1410
sale of timber from state forests, supervision and scaling by state forester, 81-1408
Lease for coal mining, maximum term, 81-502
Leases of agricultural and grazing lands and city and town lots
agricultural use of land leased for grazing, 81-414
animal-unit-month formula for rental on grazing land, 81-433
appraisal of lands, frequency, 81-401
bids and applications to be in writing and sealed, 81-405
crop share rental basis for leasing of agricultural lands, 81-402
deposit required with bid, retention, return or forfeiture, 81-436
duration of leases, 81-407
improvements, sale by lessee to successor, arbitration, 81-406
inspection of land to determine best possible use, 81-413
notice of expiration or cancellation of lease, 81-407
policy of state as to leasing of lands, 81-401
qualifications of lessee, 81-407
renewal of lease, preference of lessee, 81-405
rent to be charged in lease, 81-402
sale of land, right reserved by state in lease, 81-402
withdrawal of land from leasing, 81-405
Leases of mineral lands, authority, 81-701
Lease with option to purchase, taxability of land, 84-204
valuation and assessment of land, 84-205
Oil and gas leases
authority for lease, 81-1701
bond required of lessees, 81-1709
payment of royalties to state, 81-1705
reports of lessees to commissioner, 81-1705
report to legislative assembly of status of leases, 81-1702.4
royalties payable under lease, 81-1704
rules and regulations, adoption and publication, 81-1707
surface rights reserved, 81-1701
waste, provisions for prevention, 81-1701
Resource development
account in earmarked revenue fund, creation, purposes, 81-2403
deduction from income, maximum percentage, crediting deductions, 81-2405, 81-2406
investment of moneys in account, 81-2407
restriction on use of funds, 81-2404
definition of terms, 81-2402
policy of state, 81-2401
rules and regulations adopted by board, 81-2408
Sale of lands
amounts purchased by one person, 81-908
forfeiture for failure to pay for lands purchased, 81-912
improvements by lessee, settlement for, 81-919
mineral reservations required, 81-902
notice of sale, publication, 81-910
payment terms, 81-915
preference to lessee, 81-912

STATE LANDS (Continued)
Sale of lands (Continued)
price for which sold, 81-912
proceeds of sale, funds to which credited, 81-912
public auction, where held, 81-909
qualifications of purchasers, 81-908
shoreline lands reserved from sale, 81-903
taxability of property held under contract of sale, 84-204
valuation and assessment of property, 84-205
Timber sales from state lands in general, prices and terms, 81-1601

STATE OF MONTANA
Action authorized for use or benefit of another, M. R. Civ. P., Rule 17(a)
Claims against state, assignment of, duties of state auditor, 83-901 to 83-904
Contract actions against state, law not modified by Uniform Commercial Code, 87A-10-103
Criminal jurisdiction, 95-304
Employees
group insurance for employees authorized, 11-1024
minimum hours of salaried personnel, 59-510(1)
Flathead Indian country, criminal jurisdiction
county commissioner's consent required for assumption of jurisdiction, 83-802
customs and culture of Indians to be preserved, 83-805
date of assumption of jurisdiction, 83-803
obligation of state to assume jurisdiction, 83-801
proclamation of governor assuming jurisdiction, 83-802
resolution of tribes requesting state jurisdiction, 83-802
rights, privileges, and immunities of Indians preserved, 83-804
withdrawal of tribal consent to state jurisdiction, 83-806
Service of process on state or state agencies, M. R. Civ. P., Rule 4 D(2)(h)
Territorial jurisdiction
Blackfeet highway, reassumption of jurisdiction, 83-104.1
migratory bird reservations, consent to acquisition by United States, 83-113
Tort actions against
act not to affect actions arising under workmen's compensation act, 83-707
appeals
bond not to be required of state, 83-703
right of, 83-703
bonds not to be required of state, 83-703
compromise and settlement, power, 83-704
immunity for claims in excess of collectible insurance, 83-706
insurance, effect, 83-706
judgment as obligation of state, 83-705
jurisdiction of district courts, 83-701
limitation of liability of state to extent of insurance coverage, 83-701
procedure and practice, 83-702
service of process upon attorney general, 83-704
state not to be liable for interest prior to judgment nor for punitive damages, 83-701
War
post-attack resource management, 77-1501 to 77-1508—See WAR, Resource management
post-enemy-attack, continuity in government, V, 46; 82-3801 to 82-3809—See WAR, Continuity in government

STATE ORPHANS' HOME
See CHILDREN'S CENTER, 80-2101 to 80-2107

STATE PLANNING BOARD
Industrial development projects, assistance in, 11-4110

STATE PUBLICATIONS DISTRIBUTION CENTER
See LIBRARIES, State publications distribution center, 44-132 to 44-139

References are to Title and Section numbers

STATE PURCHASING DEPARTMENT AND AGENT
Contractors—See PUBLIC CONTRACTORS
licenses, 84-3501 et seq.
preference to Montana bidders, 82-1924 to 82-1926
Duties of purchasing agent in general, 82-1902
Emergency purchases by departments, 82-1919
Estimates by departments, approval and authority to purchase, 82-1904
Fresh fruits and vegetables, purchase, 82-1919
Institutions and departments, exclusive power to purchase for, 82-1906
Legislative assembly, supplies and services for, 82-1909
Payment for purchases, 82-1905
Printing and publications, 82-1916
Requisitions by departments, approval and authority to purchase, 82-1904
Warehouses, lease, construction and maintenance, 82-1903

STATE RECORDS
Committee abolished, 82-3322
Department of administration management program, 82-3311
definition of "records," 82-3312
destruction of records, procedure for authorization, 82-3313
library and museum material excluded from program, 82-3312
Microfilm division of historical society, creation and functions, 82-3205
Tax records, destruction authorized by board of equalization, 84-724

STATE TRAINING SCHOOL AND HOSPITAL
See BOULDER RIVER SCHOOL AND HOSPITAL, 80-2301 to 80-2312

STATE TREASURER
Deposit of funds with treasurer by state agencies, 79-306
Duties in general, 79-201
Funds in treasury
accounts within funds, creation and abolition by controller, 79-413
clearing and suspense accounts authorized, 79-412
disbursements from funds, appropriations, general laws or contracts authorizing, 79-415
enumeration and description of funds, 79-410
future laws or contracts requiring segregation of moneys, interpretation, 79-411
investment funds authorized under unified plan, 79-412
previous definitions of funds superseded, 79-411
purpose of act, 79-409
records of funds and accounts maintained by treasurer and controller, 79-414
short title of act, 79-409
special funds abolished and transferred to general fund, 79-416
Insurance department examinations revolving fund, establishment, 40-2717
Investment department examinations revolving fund, establishment and use, 15-2024
Investment funds, separate accounts maintained, 79-1208
Salary, 25-501
Sale of personal property in escheated estates, disposition of proceeds, 79-813
Treasurer of all state agencies, 79-306
Unclaimed bank funds, deposit in general fund, 5-1117
Warrants required for payment of all money, 79-202

STATE WATER CONSERVATION BOARD
Name changed to Montana Water Resources Board, 89-103—See WATER RESOURCES BOARD

STATUTE OF FRAUDS
Affirmative defense, M. R. Civ. P., Rule 8(c)
Agreement not to be performed within year, 13-606, 93-1401-7
Answer for default of another, promise to, 13-606, 93-1401-7
Investment securities, contract for sale, 87A-8-319
Marriage as consideration for agreement, 13-606, 93-1401-7
Personal property other than goods and securities, contract for sale, 87A-1-206
Real property agency contract, 13-606

STATUTE OF FRAUDS (Continued)
Real property sale or lease, 13-606, 93-1401-7
Sale of goods, 87A-2-201

STOLEN PROPERTY
Vehicles used in transporting stolen livestock, forfeiture to state, 94-35-204
Venue of prosecution, 95-408

STREET RAILROADS
Financing statements of railroads, contents and place of filing, 87A-9-302.2
definition of terms, 87A-9-302.1
Uniform Commercial Code, application, 87A-9-302.3

STREETS
Sidewalks, curbs and gutters, construction without special improvement district, 11-2226
Special fuel dealers and users license tax, disposition of funds, 84-1840

STRIP COAL MINES
See MINES AND MINING, Strip coal mining
License tax provisions, 84-1302 to 84-1304
Reclamation of lands, 50-1001 to 50-1004

SUBDIVISIONS
Sanitary restrictions as to water supply and sewage disposal, 69-5003
definition of "subdivision," 69-5002
plat not accepted unless in compliance, 69-5004
policy of state, 69-5001
rules and standards for enforcement of requirements, 69-5005

SUBPOENAS
Coroner's inquest, subpoena of witnesses, compelling attendance, 95-805, 95-806
Criminal procedure, issuance, requirements and form, 95-1801
discovery, subpoena as discovery device, 95-1803
District court subpoena requiring attendance or production of evidence, M. R. Civ. P., Rule 45(a), (b)
Grand jury, issuance of subpoenas, 95-1407

SUMMONS
Amendment of summons, when permitted, M. R. Civ. P., Rule 4 D(7)
Criminal cases, definition, issuance, form and service, failure to appear, 95-601, 95-612, 95-613
Dismissal for failure to issue or serve summons, M. R. Civ. P., Rule 41(e)
Form and signature of summons, M. R. Civ. P., Rule 4 C(2)
Forms suggested by rules, M. R. Civ. P., Appendix of Forms, Forms 1, 18
Issuance by clerk, M. R. Civ. P., Rule 4 C(1)
Justices' courts, service of summons, 93-6711
Service with complaint, M. R. Civ. P., Rule 4 D(2)

SUPERINTENDENT OF PUBLIC INSTRUCTION
Department of public instruction created, 75-1303
Salary, 25-501

SUPPORT
Reciprocal enforcement
citation of act, 93-2601-1
civil enforcement
action brought irrespective of relationship between obligor and obligee, 93-2601-11
arrest of obligor to prevent fleeing jurisdiction, 93-2601-18
complaint, contents and attachments, 93-2601-13
contempt proceedings by responding court, 93-2601-27
costs and fees, 93-2601-17
counties within state, application of procedure between, 93-2601-33
county attorney representing plaintiff, 93-2601-14

SUPPORT (Continued)
Reciprocal enforcement (Continued)
civil enforcement (Continued)
credit of payments under responding court order against other support orders, 93-2601-31
defense presented by obligor, continuance of case in absence of plaintiff, 93-2601-23
diligent prosecution required in responding state, 93-2601-20
docketing of cause in responding state, 93-2601-20
initiating state court to certify and transmit facts to respondent state, 93-2601-16
jurisdiction of district court, 93-2601-12
jurisdiction of parties restricted to support proceedings, 93-2601-32
minor obligee, guardian ad litem bringing action for, 93-2601-15
order of support by responding state, 93-2601-25
transmission of order to initiating state, 93-2601-26
transmission of order to other counties in state, 93-2601-25
pending actions do not stay support proceedings, 93-2601-30
periodic payments required by responding court, 93-2601-27
privilege inapplicable to communications between husband and wife, 93-2601-24
procedure governed by laws governing action, 93-2601-22
receipt and disbursement of payments by initiating court, 93-2601-29
recognizance required by responding state, 93-2601-27
representation of plaintiff, 93-2601-14
statement of payments made transmitted to initiating court, 93-2601-28
tracing of obligor and property, duties of county attorney in responding state, 93-2601-21
transmission of payments to initiating court, 93-2601-28
conflict of laws determined by state in which obligor present, 93-2601-9
definition of terms, 93-2601-4
extradition for nonsupport, 93-2601-7
prerequisites to extradition, 93-2601-8
illegitimate children, enforcement of obligations of father, 93-2901-5
information agency to maintain lists of courts and addresses, 93-2601-19
political subdivision furnishing support, availability of remedies to, 93-2601-10
presence of obligee in state not required for duty, 93-2601-6
presence of obligor determines applicability of laws of state, 93-2601-9
purposes of act, 93-2601-2
registration of support orders
authority for registration, 93-2601-34
foreign support orders, 93-2601-35, 93-2601-36
clerk to maintain registry of orders, 93-2601-37
effect of registered order, 93-2601-40
petition for registration, 93-2601-38
procedure to obtain jurisdiction of obligor, 93-2601-39
rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A
state furnishing support, availability of remedies to, 93-2601-10
supplemental nature of remedies, 93-2601-5
uniformity of interpretation of act, 93-2601-3

SUPREME COURT
Appointment of commission to prepare rules of civil procedure for adoption, 93-222
Briefs filed in supreme court
amicus curiae briefs, when permitted, M. R. App. Civ. P., Rule 24
appellant's brief, contents and arrangement, M. R. App. Civ. P., Rule 23(a)
appendices to briefs, when filed, M. R. App. Civ. P., Rule 25(a)
arrangement of appendix, M. R. App. Civ. P., Rule 25(c)
contents of appendix, M. R. App. Civ. P., Rule 25(b)
costs allowed for briefs, M. R. App. Civ. P., Rule 23(g)
cross-appeals, briefs in cases involving, M. R. App. Civ. P., Rule 23(h)
dismissal of appeal on failure to file brief, M. R. App. Civ. P., Rule 26(c)
exhibits, reproduction in separate volume, M. R. App. Civ. P., Rule 25(d)
length of briefs, M. R. App. Civ. P., Rule 23(g)

SUPREME COURT (Continued)
Briefs filed in supreme court (Continued)
number of copies filed and served, M. R. App. Civ. P., Rule 26(b)
parties, references to in briefs, M. R. App. Civ. P., Rule 23(d)
record, references to in briefs, M. R. App. Civ. P., Rule 23(e)
reply brief, contents, M. R. App. Civ. P., Rule 23(c)
respondent's brief, contents, M. R. App. Civ. P., Rule 23(b)
statutes, rules and regulations, reproduction in briefs, M. R. App. Civ. P., Rule 23(f)
time for filing briefs, M. R. App. Civ. P., Rule 26(a)
title of case, statement on cover and first page, M. R. App. Civ. P., Rule 27(c)
typewritten briefs, format, M. R. App. Civ. P., Rule 27(b)
typographical form of briefs, M. R. App. Civ. P., Rule 27(a)
Calendar, placement of causes on, M. R. App. Civ. P., Rule 39(a)
advancement of causes having precedence, M. R. App. Civ. P., Rule 39(c)
setting causes for argument, M. R. App. Civ. P., Rule 39(b)
Commissions of justices and clerk, recording, M. R. App. Civ. P., Rule 19(a)
Criminal law study commission, control over, 94-1001-1 to 94-1001-11—See CRIMINAL LAW STUDY
Election of justices
arrangement of names on primary ballot, 23-2005
petition for nomination, contents and filing, 23-2003
separate and independent offices for election purposes, 23-2001
Entry and notice of judgments and orders, M. R. App. Civ. P., Rule 30(a)
Fees chargeable by clerk, 82-503
Filing of papers with supreme court, manner of accomplishment, M. R. App. Civ. P., Rule 20(a)
Injunction granted by supreme court on ex parte proceedings, M. R. App. Civ. P., Rule 40
Minutes of court, approval and attestation, M. R. App. Civ. P., Rule 19(b)
Motions in supreme court, contents and manner of filing, M. R. App. Civ. P., Rule 22
Oaths of justices and clerk, recording, M. R. App. Civ. P., Rule 19(a)
Oral argument before supreme court
agreement of parties to dispense with argument, M. R. App. Civ. P., Rule 29(f)
consolidation of cross and separate appeals for argument, M. R. App. Civ. P., Rule 29(d)
exhibits, use during argument, M. R. App. Civ. P., Rule 29(g)
failure of counsel to appear for argument, M. R. App. Civ. P., Rule 29(e)
notice of time and place of argument, M. R. App. Civ. P., Rule 29(a)
order and content of argument, M. R. App. Civ. P., Rule 29(c)
postponement of argument, request for, M. R. App. Civ. P., Rule 29(a)
time allowed for argument, M. R. App. Civ. P., Rule 29(b)
Original proceedings in supreme court
application for writ or order, contents, M. R. App. Civ. P., Rule 17(d)
presentation of application to clerk, M. R. App. Civ. P., Rule 17(c)
time allowed for presentation of application, Rule 17(e)
briefs, contents and filing, M. R. App. Civ. P., Rule 17(g)
circumstances justifying institution of original proceedings, M. R. App. Civ. P., Rule 17(a)
constitutional questions raised, notice to attorney general, M. R. App. Civ. P., Rule 38
costs taxed by court, M. R. App. Civ. P., Rule 33(d)
briefs and appendices, restriction on costs, M. R. App. Civ. P., Rule 33(b)
notation of costs by clerk, M. R. App. Civ. P., Rule 33(f)
unnecessary costs not recovered, M. R. App. Civ. P., Rule 33(e)
decision, notice to parties, M. R. App. Civ. P., Rule 35(a)
hearing on application, M. R. App. Civ. P., Rule 17(h)
parties to proceedings, designation, M. R. App. Civ. P., Rule 1
public officer as party to proceeding, M. R. App. Civ. P., Rule 37(c)
substitution of parties for death or other cause, M. R. App. Civ. P., Rule 37
preliminary action by supreme court on application, M. R. App. Civ. P., Rule 17(f)
rehearing, grounds and time for filing of petition, M. R. App. Civ. P., Rule 34
Rules of Appellate Civil Procedure
application of rules and statutes, M. R. Civ. P., Rule 72
citation of rules, M. R. App. Civ. P., Rule 43(a)
effective date of rules, M. R. App. Civ. P., Rule 43(b)

References are to Title and Section numbers

SUPREME COURT (Continued)
Original proceedings in supreme court (Continued)
Rules of Appellate Civil Procedure (Continued)
exemption of statutory proceedings from rules, M. R. App. Civ. P., Rule 42(a)
pending proceedings, application of rules to, M. R. App. Civ. P., Rule 43(b)
scope of rules, M. R. App. Civ. P., Rule 1
statutes superseded by rules, M. R. App. Civ. P., Rules 42(c), 43(c)
suspension of rules by supreme court, M. R. App. Civ. P., Rule 3
statutory provisions, application to proceedings, M. R. Civ. P., Rule 72, M. R. App. Civ. P., Rule 17(b)
voluntary dismissal of proceeding, M. R. App. Civ. P., Rule 36
Practice of law by justices, restrictions on, 93-902
Prehearing conference to simplify issues before court, M. R. App. Civ. P., Rule 28
Removal of papers from clerk's office, restrictions, M. R. App. Civ. P., Rule 39(d)
Reports of supreme court
publication contract, 82-2004
supervision of preparation by justices, 82-2002
Retired justice, call for duty, 93-1130
Retirement system for justices, 93-1107 to 93-1132—See JUDGES, Retirement system
Review division for review of certain criminal sentences, 95-2501
Rules of civil procedure, power to prescribe, 93-2801-1 to 93-2801-8—See CIVIL PROCEDURE
Rules of criminal procedure, adoption of, 95-2801 to 95-2806—See CRIMINAL PROCEDURE, Supreme court rules
Salary of chief justice and justices, 25-501
Service of papers filed in supreme court required on all parties, M. R. App. Civ. P., Rule 20(b)
personal service or mail, M. R. App. Civ. P., Rule 20(c)
proof of service, M. R. App. Civ. P., Rule 20(d)
Time allowed for proceedings in supreme court
computation of days, M. R. App. Civ. P., Rule 21(a)
extension of time allowed by court, M. R. App. Civ. P., Rule 21(b)
mail service, additional time allowed after, M. R. App. Civ. P., Rule 21(c)
Trust and legacy fund investments, supervision, 79-1206
United States Supreme Court, action on receipt of mandate from, M. R. App. Civ. P Rule 35(c)

SURPLUS PROPERTY
See STATE AGENCY FOR SURPLUS PROPERTY

SWIMMING POOLS AND BATHING AREAS
Definition of terms, 69-5502
Enforcement powers of state and local officers, 69-5505
Inspections by state and local health officials, 69-5505
publication of reports of inspections, 69-5506
Nuisance, violation of chapter or rules as, 69-5510
abatement of nuisance, 69-5505
Penalty for violations, 69-5511
Plans for construction submitted to state department, 69-5507
Policy of state, 69-5501
Records and data furnished to state department, 69-5508
Rules for sanitation adopted by state board, 69-5503
Standards for sanitation and safety, 69-5509
Supervision of sanitation by state board, 69-5504

SYPHILIS
See VENEREAL DISEASE, 69-4601 to 69-4617

T

TAXATION
Air pollution equipment and facilities, classification for tax purposes, 69-3923

TAXATION (Continued)
Assessment of property for taxation
industrial development projects, 11-4108
irrigation and drainage facilities, 84-206
livestock in feeding pens or enclosures, 84-406
motor vehicles, 53-114, 84-406, 84-6008
time of assessment, 84-406
unit ownership property, assessment against unit owners, 67-2340
rules and regulations for appraisal and assessment, 67-2342
Banks
corporation license tax, state banks exempt until national banks taxable, 84-1501.4
offices in more than one county, assessment and apportionment of tax, 84-4606
Barrelage tax on beer, 4-317
Beer tax proceeds, disposition, 84-1901
Bounty fund levy against livestock, 46-1914
Boxing, sparring and wrestling exhibitions, tax on gross receipts, 82-308
Business trusts, 15-2507
Cattle protective district special levy, 46-2804
Change in assessment of property assessed to any particular person, notice of intention, 84-710
Changes in assessed valuation of classes of property, notice of contemplated action, 84-710
Cigarette tax
amount of levy, 84-5606
appeals, application of rules of civil procedure to, M. R. Civ. P., Rule 81(a), Table A
building program, referendum on pledge of proceeds to, 79-2203
deductibility on federal income tax, 84-5606.1
direct tax on retail consumer, 84-5606
insignia, affixing to package, 84-5606
proceeds of tax, deposit and use, 84-5621
Cities and towns
all-purpose exclusive levies, 84-4701.1 to 84-4701.6
levy for fund for payment of police officers on reserve list, 11-1823
tax levy for fire department relief association disability and pension fund, 11-1912
Classification of property for taxation, 84-301
percentage basis for imposition of taxes, 84-302
Coal mines license tax, 84-1302 to 84-1304
credit for reclamation of strip mining land, 50-1004
Collection of personal property tax by county treasurer, 84-4202
Contractors, license tax, 84-3501 et seq.—See PUBLIC CONTRACTORS, Licenses
Corporate dissolution, tax clearance certificate, 15-2285
Corporation license tax
action by attorney general for collection of tax, 84-1505
amount, 84-1501
assessment of tax, 84-1505
banks, state banks exempt until national banks taxable, 84-1501.4
building program, portion of tax proceeds pledged to, 79-2203
clearance certificate available to taxpayer, 84-733
disposition of fees collected, 84-734
returns to which act applies, 84-735
"corporation" defined, 84-1501
deductions allowable in computing income, 84-1502
deficiency assessments
notice of assessment, mailing to taxpayer, 84-1508.1
protest of deficiency, procedure on, 84-1508.1
time within which assessment must be made, 84-1508.2
disclosure of necessary facts, state board requiring, 84-1508
dissolution of corporation, liability for final year's tax, 84-1511
election by small business corporation not to be subject to tax
definitions, 84-1501.1
dissolution of corporation, agreement by shareholder to assume personal liability required for election, 84-1501.3
effect of election, 84-1501.2

TAXATION (Continued)
Corporation license tax (Continued)
election by small business corporation not to be subject to tax (Continued)
"electing small business corporation" defined, 84-1501.1
limitations upon right to election, 84-1501.2
method of making election, 84-1501.2
"small business corporation" defined, 84-1501.1
termination of election, 84-1501.2
validity of election, 84-1501.2
exempt corporations, 84-1501
"fiscal year" defined, 84-1504
"gross income" defined, 84-1504
interest on delinquent payment, 84-1505
levy on and sale of property for payment of tax, 84-1505
"net income" defined, 84-1504
overpayments of tax
disallowance for claim for refund, procedure on, 84-1508.2
interest on overpayments, 84-1508.1
refund or credit to be allowed on overpayment, 84-1508.1
time within which claim for refund or credit must be made, 84-1508.2
public contractors, credit for additional license fees, 84-3514
proceeds of tax, disposition, 84-1901
regulations for enforcement of act, 84-1508
release of lien and discharge of property, 84-1505.1
return, contents and filing, 84-1504
certified copies available to taxpayer, 84-732
disposition of fees collected, 84-734
returns to which act applies, 84-735
reviver of corporation after suspension or forfeiture for failure to pay, 84-1515
school equalization aid, proceeds used for, 75-3613
time of payment, 84-1505
water users' association exempt, 25-110
witnesses, compelling attendance before board, 84-1508
County license taxes, disposition of proceeds, 84-2708
County water district taxes—See COUNTIES, County water districts
Disaster emergency tax, city-county, 11-4301 to 11-4306—See CITIES AND TOWNS, Disaster emergency tax; COUNTIES, Disaster emergency tax
Electrical energy producers' license tax proceeds, disposition, 84-1901
Exemptions
fraternal benefit societies, 40-5343
game wardens' retirement benefits, 68-1420
irrigation and drainage facilities taxed as like federal and state facilities, 84-206
judges' retirement benefits, 93-1126
nursing homes operated not for profit, 84-202
unit ownership property, application of exemptions to, 67-2341
urban renewal property held by municipality, 11-3912
Federal tax lien
execution of notices and certificates, 45-1502
fees for filing liens, 45-1504
filing officer, duties, 45-1503
place of filing of notices and certificates, 45-1501
previously filed liens, 45-1507
short title of act, 45-1506
uniformity of interpretation of act, 45-1505
Freeport merchandise, classification for taxation, 84-301
Freight line companies
proceeds of tax, disposition, 84-4825
refund claims, 84-4825
Gasoline dealers and distributors
amount of tax, 84-1801.1
change in rate of tax, effect on gasoline in storage or transit, 84-1802.1
computation of tax due, 84-1802
definition of terms, 84-1801
delinquent payments and returns, interest, penalties and collection, 84-1807

TAXATION (Continued)
Gasoline dealers and distributors (Continued)
diesel fuel, collection of tax on, 84-1813
distribution of state highway construction funds
bridge construction and reconstruction on Federal-aid system, special allocations for, 32-2604
districts for apportionment of funds, 32-2603
increase of expenditures in particular districts, 32-2610
interstate highway system, allocation of funds to, 32-2609
matching of federal funds, apportionment for, 32-2605
primary federal-aid system, allocation of funds for, 32-2606
secondary federal-aid system, allocation of funds for, 32-2607
urban federal-aid funds, allocation, 32-2611
exemption permits, issuance and use, 84-1802
false statements with respect to certificates, penalty, 84-1819
records maintained by governmental agencies holding permits, 84-1805.1
refunds and drawbacks on exempt sales, 84-1818
invoice of dealer delivered to retail purchaser, 84-1809
lien on property of dealer, 84-1807
proceeds of tax, distribution and use, 32-2601
aeronautics commission, proceeds used for, 1-501
records of dealers, examination by board, 84-1803.1
refunds and drawbacks on exempt sales, 84-1818
false statements in claims for refunds, penalty, 84-1819
time of mailing of claim for refund, 84-1818.1
rules and regulations, prescribed by board, 84-1803.1
statements filed monthly by dealers, 84-1802
House trailers, tax on, 84-6601 to 84-6607—See Mobile homes, below
Imported beer, 4-324
Income tax
adjusted gross income, definition, 84-4905
nonresident taxpayers, exclusions, 84-4907
amounts earned in partnership, 84-4911
certified copies of returns available to taxpayers, 84-732
disposition of fees collected, 84-734
returns to which act applies, 84-735
change of status from that of nonresident to resident, effect, 84-4915
change of status from that of resident to nonresident, effect, 84-4915
computation of amount, 84-4914
credits for income taxes imposed by foreign states, 84-4937
definitions, 84-4901
delinquent returns and payments, penalties and interest added, 84-4924
dependency exemptions, 84-4910
federally related income excluded from adjusted gross income, 84-4905
federal returns, corrections and amended returns, filing requirements, 84-4938
information agents' duties, 84-4913
jeopardy assessments, 84-4928.1
lien of tax, release or discharge of property from, 84-4958
limitation on time for determining tax, suspension of running of statute, 84-4920.1
nonresident
ad valorem taxpayers, list, 84-4903.11
amounts withheld as lien against agent, 84-4903.9
amounts withheld considered funds held in trust, 84-4903.9
annual payment of withheld amount, when authorized, 84-4903.5
application to, 84-4903
county assessor, duties regarding, 84-4903.11
deductions restricted to those related to Montana income, 84-4907
exceptions from withholding requirements, 84-4903.3
exclusions from adjusted gross income, 84-4907
failure of agent to withhold or pay over to state, penalty, 84-4903.7
income subject to tax, 84-4903
loans made to nonresidents for grain on which chattel mortgage filed, list, preparation, 84-4903.12
modification of withholding provisions, 84-4903.6

TAXATION (Continued)
Income tax (Continued)
nonresident (Continued)
personal and dependency exemptions prorated, 84-4910
quarterly payment by withholding agent, 84-4903.5
rents and royalties, rules requiring withholding on, 84-4903.2
requiring withholding agent to make return and pay tax, power of board, 84-4903.8
rights of nonresident, 84-4903.10
rules and regulations, power of state board of equalization, 84-4903.13
transmittal of amount of withholding to state board of equalization, 84-4903.2
withholding agent, 84-4903.4
withholding from payments to, 84-4903.2
withholding of amount of tax, authorized, 84-4903.1
overpayment, credits and refunds, 84-4956
partnership income, 84-4911
penalties for violation of act, 84-4924
personal exemptions, 84-4910
persons moving out of state, 84-4915
persons who must file return and pay tax, 84-4914
proceeds of tax, disposition, 84-1901
public contractors, credit for additional license fees, 84-3514
rate of tax, 84-4902
refund of overpayments, 84-4956
returns, 84-4914
revision of return, when permitted, 84-4922
school equalization aid, proceeds used for, 75-3613
status changed from that of resident to nonresident, effect, 84-4915
temporary residents, deductions allowed to, 84-4907
time for payment, 84-4914
withholding, quarterly payment by employer, exception, 84-4946
Industrial development projects subject to tax, remedies against, 11-4108
Inheritance tax—See INHERITANCE TAX
Insurance premiums tax, 40-2821
fire insurance, 82-1231
independently procured coverage, 40-3427
retaliatory tax provisions, 40-2826
surplus line premiums, 40-3420
penalty for failure to file or pay, 40-3421
Irrigation and drainage facilities, when subject to taxation, 84-206
Judgment, tax operating as, 84-3807
Levy of taxes
adult education, tax levy for, 75-1633
all-purpose exclusive levy by cities and towns
abandonment of method in future years, 84-4701.4
allocation of levy to departments of municipality, 84-4701.3
binding effect of election to use all-purpose levy, 84-4701.4
certification of levy to county officers, 84-4701.5
extraordinary levies to pay bonded indebtedness and judgments authorized, 84-4701.6
maximum rate of levy, 84-4701.2
multiple-levy statutes not repealed, 84-4701.1
purpose of act, 84-4701.1
county basic school levy, 75-3706
distribution among districts, 75-3618
high school levy, 75-4516.1
county poor fund levy, 71-222
county tax levy, 16-1015
county tax levy for construction, maintenance and repair of public ferries, 32-1518
elementary school levy, 75-1723
fire districts in unincorporated areas, levy for, 11-2008
flood control levy by county or municipality, 89-3312
joint school district levies, 75-1816
school district levy to provide foundation program, 75-3706
additional levy, adoption on approval by tax payers, 75-3801

TAXATION (Continued)
Levy of taxes (Continued)
school transportation levy, 75-3414
soil conservation district assessment, 76-209
Lien of tax operating as execution, 84-3807
Limitation of actions on claim for refund, 84-726
Liquor license tax proceeds, disposition, 84-1901
Livestock
assessment of stock in feeding pens or enclosures, 84-406
bounty tax levy, 84-5214
maximum rate of tax, 84-5211
proceeds of tax, deposit and use, 84-5212
purposes for which proceeds used, 84-5211
Metalliferous mines
amount of tax, 84-2004
computation of tax, 84-2006
delinquent taxes, penalty, 84-2007
notice of tax, 84-2006
proceeds of tax, disposition, 84-1901
Mobile homes
application of act to mobile homes and trailers subject to taxation, 84-6605
assessment of property tax, time of, 84-406
classification for taxation, 84-301
definitions, 84-101, 84-6601
fees in addition to registration and license fees, 32-3305, 53-615
highway checking of trailers, receipt to be produced, 84-6603
moving of mobile home, declaration of destination required, procedure, 84-6606
penalty for failure to display or produce declaration, sticker or receipt, 84-6604
regulations of state board of equalization, 84-6607
stickers to show property tax paid, issuance and display required, 84-6602
Motor vehicles
assessment and registration provisions, 53-114, 84-406, 84-6008
interstate fleets
apportionment on basis of in-state miles traveled, 84-727
assessment of property tax by state board, 84-727
collection of tax by state board, 84-730
cost of vehicle to be included in application for registration, 84-729
deposit and distribution of taxes, 84-731
partial year's tax, 84-727
rate of levy applied to fleet, 84-729
registration of fleet, payment of tax as condition precedent, 84-727
situs of vehicles in state for purposes of taxation, 84-730
valuation of fleet, method of computation, 84-728
Motor vehicles and motor fuels, taxing extends only to vehicles operated on public roads, 32-2124.2
operation across public roads and highways not considered operation on roads, when, 32-2124.1
Natural gas tax
assessment to pay expenses of conservation commission, 60-145
collection of tax by county treasurer, 84-6208
computation of tax by county assessor, 84-6208
proceeds of distributor's license tax, disposition, 84-1901
withholding of tax from royalties, 84-6208
Net proceeds tax
assessment roll, 84-5408
computation, 84-5403
valuation of net proceeds, transmission to county assessor, 84-5408
Oil producers
computation of tax, 84-2202
proceeds of tax, disposition, 84-1901
rate of tax, 84-2202
Protest payment of license fees, procedure after, 84-4501
Public contractors' license tax, 84-3501 et seq.—See PUBLIC CONTRACTORS, Licenses

TAXATION (Continued)
Public property subject to taxation when subject to sale contract or option to purchase, 84-204
valuation and assessment of property, 84-205
Records of taxation, destruction authorized by state board, 84-724
Refund of overpayments, 84-726
Royalty interests, 84-5409
Sale of property for taxes
county leased lands, resale, 84-4198
rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
Special fuel dealers and users
bond required of dealers and users, 84-1833
credits allowed, 84-1836, 84-1837
definition of terms, 84-1831
examination of records, 84-1838
lien of tax on property of dealer or user, 84-1833
proceeds of tax, disposition, 84-1840
returns required, filing date, 84-1835
temporary permits to unlicensed users
fees, 84-1843
issuance of permit, 84-1842
penalty for operation without permit, 84-1844
time of attachment of tax, 84-1832
State board of equalization
change in assessed valuation of classes of property, notice and hearing, 84-710
change in assessment of property assessed to any particular person, notice of intention, 84-710
cigarette sales regulation, 51-301 to 51-314—See CIGARETTE SALES
compensation of members, 84-702
computation of net proceeds, 84-5403
contractors, determination of residency of bidder on public contract, duties, 82-1925.1
qualifications of members, 84-702
records, destruction authorized by state board, 84-724
reports to governor and legislature, 84-708
rules and regulations regarding collection of taxes from nonresidents, power to adopt, 84-4903.13
schools and meetings for assessors and appraisers, 84-708
supervision of county officials by state board, 84-708
transmission of net proceeds assessments to county assessor, 84-5408
visits to county officials, 84-708
State property subject to taxation when subject to sale contract or option to purchase, 84-204
valuation and assessment of property, 84-205
Suspense account for receipts and refunds, 84-725
Telegraph company's license tax proceeds, disposition, 84-1901
Telephone company's license tax proceeds, disposition, 84-1901
Wheat, assessment on annual crop when sold, 3-2911 to 3-2913

TELEPHONE AND TELEGRAPH
Abuse, harassment or extortion by telephone, penalty, 94-35-221.5, 94-35-221.6
Credit card, unauthorized use, 94-1823
interstate communications, application of credit law to, 94-1830
knowledge implied from use of false or revoked credit card or telephone number, 94-1828
notice of revocation of credit card, manner of giving, 94-1827
Emergency call, failure to relinquish line for, penalty, 94-35-221.1
emergency as defense, 94-35-221.2
false pretext of emergency, penalty, 94-35-221.3
lack of knowledge as defense, 94-35-221.2
printing of act in directories, 94-35-221.4
Financing statements of utility, contents and place of filing, 87A-9-302.2
definition of terms, 87A-9-302.1
Uniform Commercial Code, application, 87A-9-302.3

References are to Title and Section numbers

TELEPHONE AND TELEGRAPH (Continued)
Fraudulent devices to obtain service without payment, 94-1824
Injury to or removal of coin box or wires, penalty, 94-3211
Tampering with or tapping lines, penalty, 94-3203

TELETYPEWRITER COMMUNICATIONS SYSTEM
See LAW ENFORCEMENT TELETYPEWRITER COMMUNICATIONS, 82-3901 to 82-3906

TELEVISION
Definitions, 70-402
Districts
abandonment of district, disposition of property and funds, 70-425
annexation of contiguous areas to district, 70-426
areas includible in district, 70-410
assessor to list television owners within district, 70-417
budget for district, preparation and presentation, 70-418
cable systems not within purpose of district, 70-408
filing of order creating district, 70-415
funds, disbursement, 70-419
hearing on formation of district, 70-414
naming of district, 70-415
organization of districts authorized, 70-409
petition to form district, contents, 70-411
filing and transmission of petition to county commissioners, 70-412
powers of districts, 70-420
publication of petition and notice of meeting to consider, 70-413
purposes for which districts authorized, 70-408
resolution creating district or denying petition, 70-414
tax on television sets, levy, 70-418
exemption of taxpayers who do not benefit from translator, 70-422
false or fraudulent claim for exemption, misdemeanor, 70-424
treasurer of district, 70-419
trustees of district
appointment and terms, 70-416
expenses, reimbursement, 70-421
meetings of trustees, 70-423
Legislative purpose, 70-401
License for operation of VHF booster or VHF translator system
application, 70-404
contents of application, 70-404
fee for license, 70-405
issuance, 70-405
requirement, 70-403
Publication of notice supplemented by broadcast, 19-201
copy of transcript to be retained by broadcasting station, 19-202
proof of broadcast, 19-203
Rules and regulations, 70-406
Violations of act, penalty, 70-407

TERMS OF COURT
Expiration, effect on time limitation in civil proceedings, M. R. Civ. P., Rule 6(c)

THEATERS
Sanitary inspections and correction of conditions by boards of health, 69-4118

TIME
Computation of time allowed in civil proceedings, M. R. Civ. P., Rule 6(a)
Extension of time allowed in civil proceedings, M. R. Civ. P., Rule 6(b)
Term of court, effect on limitations in civil proceedings, M. R. Civ. P., Rule 6(c)

TORTS
Licensees for recreational purposes, landowner's restricted liability to, 67-808
definition of recreational purposes, 67-809

TORTS (Continued)
Tort actions against state, 83-701 to 83-707—See STATE OF MONTANA, Tort actions against

TOURIST CAMPS
Definition, 69-5601
Inspection of grounds by state and local officers, 69-5605
operators to permit inspections, 69-5603
License required for operation, 69-5603
application for license, 69-5604
denial or revocation of license, grounds, 69-5605
hearing on denial or revocation, 69-5606
expiration of license, 69-5604
fee for license, 69-5604, 69-5605
Penalties for violations, 69-5607
Rules for operation adopted by state board, 69-5602
posting of rules, 69-5603

TOWNSHIPS
Mileage allowances to officers for use of own vehicles, 59-801
liability for approval of excess amount, 59-802

TRADE-MARKS
Indian articles, regulations for sale of imitation articles, 85-301 to 85-304
Recording of trade-marks by secretary of state, 85-103
fees of secretary of state, 25-102

TREASON
Venue of prosecution, 95-412

TRIALS
Assignment of cases for trial, M. R. Civ. P., Rule 40
Calendar for trial, placement of actions, M. R. Civ. P., Rule 40
Consolidation of actions for trials, M. R. Civ. P., Rule 42(a)
Criminal cases, 95-1901 to 95-1916—See CRIMINAL PROCEDURE, Trials
Exceptions to rulings of court unnecessary, M. R. Civ. P., Rule 46
Findings by court, separate statement, M. R. Civ. P., Rule 52(a)
Hostile witnesses, examination as on cross-examination, M. R. Civ. P., Rule 43(b)
Instructions to jury, M. R. Civ. P., Rule 51
Jury trial
advisory jury, M. R. Civ. P., Rule 39(c)
court ordering jury trial, M. R. Civ. P., Rule 39(b)
demand for jury trial, M. R. Civ. P., Rule 38(b)
issues, designation for jury trial, M. R. Civ. P., Rule 38(c)
right to jury trial in civil cases, M. R. Civ. P., Rule 38(a)
right to jury trial in criminal cases, 95-1901, 95-2004
summoning of jurors, 93-1509
waiver of right to jury trial, M. R. Civ. P., Rule 38(d)
Open court trials required, M. R. Civ. P., Rule 77
Separation of claims for trials, M. R. Civ. P., Rule 42(b)
Summoning of jurors, 93-1509

TRUST INDENTURES
Acceleration provisions not applied when grantor cures default, 52-412
Authorization of trust indentures, 52-404
Citation of act, 52-401
Deficiency judgment not allowed after foreclosure by advertisement and sale, 52-414
Definition of terms, 52-403
Foreclosure
attorney's fees allowed on foreclosure, 52-416
deed given by trustee after sale, contents and effect, 52-410
deficiency judgment not allowed after foreclosure by advertisement and sale, 52-414
discontinuance of proceedings on payment of amount in default, 52-412

TRUST INDENTURES (Continued)
Foreclosure (Continued)
fees allowed on foreclosure, 52-416
notice of sale by trustee
affidavits of mailing, posting and publication, recording, 52-409
cancellation on cure of default before sale, 52-412
mailing, posting and publication of notice, 52-409
recording of notice, 52-408
requests for copies of notice, recording, 52-415
parcels in which sold, 52-409
payment of price bid in cash, 52-409
possession of property, when purchaser at trustee's sale entitled to, 52-411
postponement of sale, 52-409
proceeds of sale by trustee, disposition, 52-413
real estate brokers' act inapplicable to sale by trustee, 66-1926
refusal of successful bidder to pay purchase price, 52-409
required conditions for foreclosure by advertisement and sale, 52-408
sale to highest bidder, 52-409
time within which proceedings to be commenced, 52-407
Mortgage laws, application to indentures, 52-417
Policy of state declared, 52-402
Power of sale implied in indenture, 52-404
Qualifications of trustee, 52-405
Reconveyance to grantor on performance of obligation secured, 52-406
Short title of act, 52-401
Size of tract for which indenture authorized, 52-404
Substitution for previously existing mortgage prohibited, 52-404
Successor trustee, appointment, filing, 52-405

TRUST RECEIPTS
See SECURED TRANSACTIONS, 87A-9-101 to 87A-9-507

TRUSTS AND TRUSTEES
Action brought without joining beneficiaries as parties, M. R. Civ. P., Rule 17(a)
Business corporations, voting trusts, 15-2232
Business trusts, 15-2501 to 15-2508—See BUSINESS TRUSTS
Compensation of trustee, 86-511
Devise or bequest in will to trustee of inter vivos trust established by testator
effect of entire revocation of trust prior to death, 91-321
property not deemed held under testamentary trust, 91-321
validity, 91-321
Equipment trusts, 87A-9-101 to 87A-9-507—See SECURED TRANSACTIONS
Investments, retention permitted when received from source other than purchase, though not qualified investment, 86-327
Massachusetts trust, 15-2501 to 15-2508—See BUSINESS TRUSTS
Pension trusts, statutory or common-law rules relating to restraint against alienation, suspension of power of alienation, accumulation of income, perpetuities or remoteness of vesting, not applicable to, 67-423
Principal and income act—See PRINCIPAL AND INCOME ACT
Real estate brokers' act inapplicable to trustees, 66-1926
Rules of civil procedure, application in administration, M. R. Civ. P., Rule 81(a), Table A
Sale of property in good faith, validation, 91-4324
Validity, 67-424

TUBERCULOSIS
Commitment to hospital for diagnosis and treatment
court costs, expenses and fees, payment by county, 69-4315
detention at hospital of person committed, 69-4311
failure to submit to examination as cause for commitment, 69-4309
maintenance and treatment expenses at state hospital, payment, 69-4316
order of commitment forwarded to hospital and board of health, 69-4310
release from commitment to hospital, 69-4313
court order for release, 69-4312

TUBERCULOSIS (Continued)
Commitment to hospital for diagnosis and treatment (Continued)
transfer between hospitals of person committed, 69-4314
transportation expenses, payment by county, 69-4316
warrant directed to sheriff, 69-4310
Definition of terms, 69-4302
Examination of suspected cases ordered by district court
application for court order, contents, 69-4306
commitment to hospital on failure to submit to examination, 69-4309
court costs, expenses and fees, payment by county, 69-4315
findings and order of court, 69-4308
hearing on application, procedure, 69-4307
Facilities for treatment maintained by state hospital, 69-4317
Federal funds, acceptance and use, 69-4304
Policy of state, 69-4301
Rules for determination of communicable state, 69-4303
State departmental powers, 69-4304
Suspected cases of tuberculosis, application for examination or commitment, 69-4305

U

UNCLAIMED PROPERTY
See PROPERTY, Unclaimed property, 67-2201 to 67-2230

UNDERTAKERS
See MORTICIANS AND FUNERAL DIRECTORS, 66-2701 to 66-2717

UNEMPLOYMENT COMPENSATION
Account in agency fund
custodian of account, 87-112
establishment of account, 87-111
moneys paid into account, 87-111
subaccounts, enumeration and use, 87-112
Administration account in federal and private revenue fund, sources and use, 87-133
Benefits
disqualification for benefits, 87-106
duration of benefits, 87-104
eligibility conditions, 87-105
qualifying wages, 87-103
schedule of benefits, 87-103
weekly benefit amounts, 87-103
Commission
administration of act, 87-120
report to governor, 87-120
Contributions by employers
classification and rating of employers, 87-109
levy and sale for collection of contributions, 87-139
maximum wages used as basis for contributions, 87-109
schedule of contributions, 87-109
Cooperation with federal government, 87-128
Definitions used in act, 87-148, 87-149
Extended benefits, cooperation with federal government, 87-128
Federal moneys paid into administration account, 87-133
Penalties for violations, 87-145
Rules of civil procedure, application to review of orders, M. R. Civ. P., Rule 81(a), Table A
Secretary of labor, approval of act by, 87-152

UNEMPLOYMENT COMPENSATION COMMISSION BUILDING
See STATE CAPITOL, Unemployment compensation commission building

UNIFORM COMMERCIAL CODE
Acceleration of performance, good faith required in exercising option, 87A-1-208

References are to Title and Section numbers

UNIFORM COMMERCIAL CODE (Continued)
Actions permitted to enforce rights and obligations, 87A-1-106
Agreement as to which state's laws apply, 87A-1-105
Agreement to vary terms of code, 87A-1-102
Authenticity of third-party documents presumed, 87A-1-202
Bank deposits and collections, 87A-4-101 to 87A-4-504—See BANKS AND BANKING, Deposits and collections
Bills of lading, 87A-7-101 to 87A-7-105, 87A-7-301 to 87A-7-603—See BILLS OF LADING
Bulk transfers, 87A-6-101 to 87A-6-111—See BULK TRANSFERS
Captions as part of act, 87A-1-109
Citation of act, 87A-1-101
Commercial paper, 87A-3-101 to 87A-3-805—See COMMERCIAL PAPER
Conflict of laws, 87A-1-105
Course of dealing between parties, application, 87A-1-205
Damages, principles for measurement, 87A-1-106
Definition of terms in general, 87A-1-201
Documents of title, 87A-7-101 to 87A-7-603—See BILLS OF LADING; WAREHOUSE RECEIPTS
Effective date, 87A-10-101
Gender of words used, interchangeability, 87A-1-102
Good faith obligation imposed, 87A-1-203
Investment securities, 87A-8-101 to 87A-8-406—See INVESTMENT SECURITIES
Letters of credit, 87A-5-101 to 87A-5-117—See LETTERS OF CREDIT
Liberal administration of remedies, 87A-1-106
Mortgage law, conflicts with, 52-117
Plural includes singular, 87A-1-102
Policies of act, 87A-1-102
Prior transactions, application of prior law to, 87A-10-102
Purposes of act, 87A-1-102
Renunciation of claim or right without consideration, 87A-1-107
Repeal of code provisions not to be implied, 87A-1-104
Reservation of rights by party while performing or assenting to performance, 87A-1-207
Sale of goods, 87A-2-101 to 87A-2-725—See SALES
Saving of certain laws from repeal by code, 87A-10-103
Secured transactions, 87A-9-101 to 87A-9-507—See SECURED TRANSACTIONS
Severability of provisions, 87A-1-108
Short title, 87A-1-101
Singular includes plural, 87A-1-102
Storage deposits, applicability to, 20-314
Supplementary general principles of law applicable, 87A-1-103
Territorial application by agreement, 87A-1-105
Time allowed for required actions, 87A-1-204
Transitional provisions, 87A-10-102
Usage of trade, application, 87A-1-205
Variation of terms by agreement, 87A-1-102
Waiver of claim or right without consideration, 87A-1-107
Warehouse receipts, 87A-7-101 to 87A-7-210, 87A-7-401 to 87A-7-603—See WAREHOUSE RECEIPTS

UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT
See PROPERTY, Unclaimed property, 67-2201 to 67-2230

UNIFORM FACSIMILE SIGNATURES OF PUBLIC OFFICIALS ACT
See PUBLIC OFFICERS AND EMPLOYEES, Facsimile signatures of public officials

UNIFORM PRINCIPAL AND INCOME ACT
Text, 67-1901 to 67-1916—See PRINCIPAL AND INCOME ACT

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT
See SUPPORT, Reciprocal enforcement, 93-2601-1 to 93-2601-40

UNITED STATES
Installations and facilities donated to state, acceptance by board of examiners, 81-1101.1
Migratory bird reservations, consent to acquisition, 83-113

UNITED STATES SENATORS
Residence required for election or appointment, 23-2206

UNIVERSITY OF MONTANA
See COLLEGES AND UNIVERSITIES

URBAN RENEWAL LAW
See CITIES AND TOWNS, Urban renewal law

USURY
Secured Transactions chapter, usury law not affected by, 87A-9-201

V

VEHICLE EQUIPMENT SAFETY COMMISSION
Accounts of commission, inspection by state examiner, 32-21-174
Budgets submitted to state budget director, 32-21-173
Co-operation of governmental agencies with commission, 32-21-171
Creation by terms of interstate compact, 32-21-166
Documents of commission to be filed with highway patrol board, 32-21-172
Legislative approval required for rules and regulations of commission, 32-21-168
Notices to be filed with highway patrol supervisor, 32-21-172
Representation of Montana on commission, 32-21-169
Retirement of commission employees, 32-21-170

VENEREAL DISEASE
Blood tests, standards and laboratories approved by department, 69-4611
  birth certificate to show whether test given, 69-4614
  positive results reported to department, 69-4613
    follow-up procedures on reports of positive tests, 69-4615
  pregnant women, testing required, 69-4612
Certificates of freedom from disease, restrictions on issuance and use, 69-4609
Definition of disease, 69-4601
Disclosure of information on persons infected, restrictions, 69-4610
Drugs for treatment of disease, restrictions on sale or recommendation, 69-4608
Educational campaigns for control of disease, 69-4602
Examination of suspects required by health officer, 69-4605
Exposure of other persons prohibited, 69-4601
  misdemeanor, 69-4617
  report of exposure to state department, 69-4607
Federal funds, acceptance and use for control of disease, 69-4603
Isolation of persons who refuse examination or treatment, 69-4605
Penalty for violation of chapter or rules, 69-4617
Prisoners, examination and treatment for disease, 69-4606
Reports of cases by physicians, 69-4604
  exposure of other persons to be reported, 69-4607
Rules of state board having effect of law, 69-4616
State department's functions with respect to disease, 69-4602
Treatment required by health officer, 69-4605

VENUE
Change of venue in civil cases, procedure, M. R. Civ. P., Rule 12(b)
Criminal cases, 95-401 to 95-412—See CRIMINAL PROCEDURE, Venue
Rules of civil procedure do not affect venue, M. R. Civ. P., Rule 82

VERDICTS
Coroner's inquest, verdict in writing, contents, 95-807
Criminal cases, 95-1909, 95-2006—See CRIMINAL PROCEDURE, Verdicts
Directed verdict, motion for, M. R. Civ. P., Rule 50

VERDICTS (Continued)
Interrogatories to jury, M. R. Civ. P., Rule 49(b)
Judgment, entry on verdict, M. R. Civ. P., Rule 58
Number of jurors required to concur in civil cases, M. R. Civ. P., Rule 48
Special verdicts, M. R. Civ. P., Rule 49(a)

VETERANS
Bonds for payment or redemption of compensation bonds, 79-2202, 79-2205, 84-5621
Burial of veteran, duties of county clerk, 71-123
Home for veterans
cost of support, payment by resident or responsible person, 80-1601 to 80-1604—See STATE INSTITUTIONS, Cost of support of residents
eligibility for residence in home, 80-1803
wives and widows admitted as space allows, 80-1801
Federal money, acceptance and use for benefit of home, 80-1804
industrial activities permitted, 80-1501 to 80-1503—See STATE INSTITUTIONS, Industrial activities permitted
location, 80-1801
management and control of home, 80-1401 to 80-1409—See STATE INSTITUTIONS, Department of institutions
purpose of home, 80-1801
superintendent to be honorably discharged veteran, 80-1802
Organizations housed in Veterans and Pioneers Memorial Building, 78-202

VETERANS AND PIONEERS MEMORIAL BUILDING
See STATE CAPITOL, 78-202

VETERANS' MEMORIAL MONEYS
Appropriations, requests for, 78-302
Commission abolished, 82-3322
Purpose of expenditures, 78-302

VETERINARY MEDICINE
Alcoholic beverage, administration by veterinary, 4-138
Compensation of members and officers of board of examiners, 66-2203
Corporations for practice of veterinary medicine, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Examination of applicants for license to practice, 66-2204
Moneys received by board of examiners, deposit and use, 66-2203
Pregnancy and fertility testing within scope of practice, 66-2209
exemptions from veterinary practice law unimpaired, 66-2209.2
testing of own animals not prohibited, 66-2209.1
Qualifications of applicants for license to practice, 66-2204
Records of board of examiners, 66-2203
Report of board of examiners to governor, 66-2203
Temporary permit to practice, 66-2204

VITAL STATISTICS
Adoption report filed by clerk of court, 69-4433
substitute birth certificate, issuance, 69-4420
recording of substitute certificate, 69-4421
restoration of original certificate on annulment of adoption, 69-4421
Annulment of marriage, certificate prepared and forwarded by clerk of court, 69-4433
information required in certificates, 69-4411
report prepared by clerk, contents, 69-4434
Birth certificates, filing required, 69-4413
adoption of child, issuance of substitute certificate, 69-4420
recording of substitute certificate, 69-4421
restoration of original on annulment of adoption, 69-4421
amendment of certificate permitted, 69-4416
notation on altered certificate, 69-4417
probative value of altered certificate, 69-4419

VITAL STATISTICS (Continued)
Birth certificates, filing required (Continued)
delayed certificate, filing permitted, 69-4416
notation on delayed certificate, 69-4417
probative value of delayed certificate, 69-4419
evidentiary value of certificates, 69-4412
forwarding and filing of original certificates, 69-4411
foundlings, report constituting certificate, 69-4415
illegitimacy disclosed only on court order, 69-4422
information required in certificates, 69-4411
judicial procedure for establishment of date and place of birth, 69-4418
legitimation of child, issuance of new certificate, 69-4423
syphilis test to be noted on certificate, 69-4614
unattended births, supplementary report by registrar, 69-4414
Burial permit required for disposition of dead body, 69-4428
delay in determining cause of death, issuance of permit, 69-4427
importation of body into state, indorsement of permit, 69-4429
Certified copy of certificates furnished on request, 69-4406
fee for certified copy, 69-4407
disposition of fees, 69-4408
local registrars not to issue certified copies, 69-4411
Death certificate, preparation and filing, 69-4425
amendment of certificate permitted, 69-4416
burial permit, certificate or notice of delay required for, 69-4428
delay in determining cause of death, notice of reason required, 69-4427
evidentiary value of certificates, 69-4412
filing and forwarding of original certificates, 69-4411
information included in certificates, 69-4411
information to be furnished state registrar on demand, 69-4435
time of filing, 69-4424
unattended death, information used to complete certificate, 69-4426
Definition of terms, 69-4401
Disclosure of information from records restricted, 69-4404
governmental agencies, disclosure to, 69-4405
illegitimacy, court order required for disclosure, 69-4422
statistical use of information permitted, 69-4405
Divorce certificate, preparation and forwarding by clerk of court, 69-4433
evidentiary value of certificates, 69-4412
information furnished to state registrar on demand, 69-4435
information to be included in certificate, 69-4411
report by clerk, contents, 69-4434
Institutions to report information pertaining to inmates or patients, 69-4430
Local registrars, appointment and supervision, 69-4409
deputies, appointment, 69-4410
fees paid to local registrars, 69-4431
Marriage certificates filed, report to state board, 69-4432
evidentiary value of certificates, 69-4412
information included in certificates, 69-4411
information to be furnished state registrar on demand, 69-4435
State department powers and duties, 69-4403
State-wide system established by department, 69-4402
Violations of act or regulations
local registrars to report violations, 69-4410
major violations, penalty, 69-4436
minor violations, penalty, 69-4437

VOCATIONAL SCHOOL FOR GIRLS
See STATE INSTITUTIONS, Juvenile facilities, 80-2202 et seq.

W

WAGES
Assignment of claims against state, 83-901 to 83-904

WAGES (Continued)
Assignments excluded from Uniform Commercial Code, 87A-9-104
Payment of
failure to pay when due
assignment and prosecution of claim by commission, 41-1314.2
investigations and inspections by commissioners, 41-1314.1
separation from employment before payday, when payable, 41-1303
Restaurant, Bar and Tavern Wage Protection Act
affidavit of ownership of equipment required of lessees, 41-2005
time of filing affidavit, 41-2006
bond required of lessee engaging in business, 41-2002
amount of bond required, 41-2005
cancellation of bond revokes certificate, 41-2006
condition of bond, 41-2006
discharge of sureties from further liability, 41-2010
increase in bond required by commissioner, 41-2010
new bond required by commissioner, 41-2010
state as obligee of bond, 41-2006
time of filing bond, 41-2006
certification of lessee on filing of bond, 41-2009
crediting and use of application fees, 41-2011
revocation of certificate by cancellation of bond, 41-2006
definition of terms, 41-2004
injunction against engaging in business until bond filed, 41-2008
lessor's liability for wages unpaid by lessee, 41-2007
purpose of act, 41-2003
short title, 41-2001

WAIVER
Affirmative defense, M. R. Civ. P., Rule 8(c)

WAR
Continuity in government, post-enemy-attack
citation of act, 82-3801
city or town executives, succession to offices, 82-3805
city or town governing bodies, succession to membership, 82-3804
constitutional provision, basis for act, V, 46; 82-3801
county commissioners, succession to board membership, 82-3803
duration of operation of act, 82-3809
governorship, succession to, 82-3802
quorum for state or local governing bodies, 82-3806
seat of local government, moving, 82-3808
seat of state government, moving, 82-3807
Resource management, post-enemy-attack
citation of act, 77-1501
definition of terms, 77-1503
emergency resource planning committee, members, 77-1504
governor
emergency resource planning committee, 77-1504
powers and duties, 77-1505
proclamation of emergency, 77-1506
legislative findings, 77-1502
policy of state, 89-1502
proclamation of emergency by governor, 77-1506
judicial inquiry as to proclamation and facts, 77-1507
violation of rules and regulations, penalty, 77-1508

WAREHOUSE RECEIPTS
Actions based on bailment, terms in receipt prescribing time and manner of instituting, 87A-7-204
Altered receipt, enforceability, 87A-7-208
Attachment of goods covered by documents, procedure required, 87A-7-602
Authenticity of third-party documents presumed, 87A-1-202

WAREHOUSE RECEIPTS (Continued)
Bills of lading law, provisions included in but omitted from warehouse receipts law, 87A-7-105
Bond against withdrawal required by law, effect of receipt issued by owner of goods, 87A-7-201
Care required of warehousemen to prevent loss or injury to goods, 87A-7-204
Citation of Uniform Commercial Code chapter, 87A-7-101
Claims based on bailment, terms in receipt prescribing time and manner of presenting, 87A-7-204
Commercial Paper chapter inapplicable to receipts, 87A-3-103
Conflicting claims to goods, warehouseman compelling interpleader, 87A-7-603
Contents required or permitted in receipts, 87A-7-202
Course of dealing between parties, application, 87A-1-205
Damages for loss or injury to goods, limitation by contract, 87A-7-204
Defenses defeated by negotiation of receipt, 87A-7-502
Definition of terms, 87A-7-102
    general definitions in Uniform Commercial Code, 87A-1-201
Delivery of goods by warehouseman
    destroyed receipt, 87A-7-601
    failure to require receipt, criminal penalty, 88-154
    good faith delivery exonerating warehouseman, 87A-7-404
    lien lost by voluntary delivery, 87A-7-209
    lien to be satisfied before delivery, 87A-7-403
    lost receipt, 87A-7-601
    obligation of warehouseman to deliver, 87A-7-403
    persons who may require delivery, 87A-7-403
    stolen receipt, 87A-7-601
    surrender of document required before delivery, 87A-7-403
    termination of storage by warehouseman, 87A-7-206
Destroyed receipts, obtaining delivery of goods, 87A-7-601
Deterioration of goods, notice by warehouseman to remove, 87A-7-206
Duplicate receipt, rights and liabilities of parties under, 87A-7-402
    criminal penalty for issuance, 88-152
Endorsement of receipt
    default by warehouseman or previous endorser, endorser not liable for, 87A-7-505
    negotiation, when endorsement required for, 87A-7-501
    nonnegotiable receipt, effect of endorsement, 87A-7-501
    transferee's right to require necessary endorsement, 87A-7-506
Federal law controlling over Commercial Code chapter, 87A-7-103
Formal requirements of receipt, 87A-7-202
Fungible goods covered by receipt
    buyer from warehouseman takes free of claim under receipt, 87A-7-205
    commingling permitted, 87A-7-207
    overissue of receipts, persons entitled to goods, 87A-7-207
        liability of issuer for damages, 87A-7-402
Good faith required, 87A-1-203
Hazardous goods, sale or disposition by warehouseman, 87A-7-206
Interpleader of conflicting claims to goods, 87A-7-603
Irregularities in issue of receipt, obligations of issuer unaffected, 87A-7-401
Judicial process against goods covered by receipt, procedure required, 87A-7-602
Letter of credit requirements, law governing adequacy, 87A-7-509
License required for issuance of receipts, effect of receipt issued by owners of goods, 87A-7-201
Lien of warehouseman
    charges covered by lien, 87A-7-209
    delivery of goods causing loss of lien, 87A-7-209
    delivery of goods, satisfaction of lien required for, 87A-7-403
    enforcement of lien, procedure, 87A-7-210
    persons against whom lien enforceable, 87A-7-209
    refusal to deliver goods causing loss of lien, 87A-7-209
    sale of goods to enforce lien, 87A-7-210
    termination of storage at warehouseman's option, sale of goods on, 87A-7-206
Lost receipts, obtaining delivery on, 87A-7-601
Misdescription of goods in receipt, liability of issuer, 87A-7-203

WAREHOUSE RECEIPTS (Continued)
Negotiability of receipt, requirements for, 87A-7-104
Negotiation of receipt
defenses defeated by negotiations, 87A-7-502
delivery required for negotiation, 87A-7-501
endorsement necessary to title, right of holder to require, 87A-7-506
endorsement, when required for negotiation, 87A-7-501
formal requirements for negotiation, 87A-7-501
rights acquired by holder to whom negotiation made, 87A-7-502
title required by holder to whom negotiation made, 87A-7-502
warranties of negotiator, 87A-7-507
intermediary delivering documents, 87A-7-508
Nonreceipt of goods described, liability of warehousemen, 87A-7-203
Omission of required terms from receipt, liability of warehousemen, 87A-7-202
Perishable goods, removal on notification by warehouseman, 87A-7-206
Persons who may issue receipts, 87A-7-201
Prior interest prevailing over interest represented by receipt, 87A-7-503
Regulatory laws controlling over Commercial Code chapter, 87A-7-103, 87A-10-103
Removal of goods from storage on warehouseman's notice, 87A-7-206
Reservation of rights by party while performing or accepting performance, 87A-1-207
Sale contract requirements, law governing adequacy, 87A-7-509
Sale of goods to enforce warehouseman's lien, 87A-7-210
Security interest in receipt, manner of perfection, 87A-9-304
possession taken by secured party, 87A-9-305
Security interest reserved by warehouseman, enforceability, 87A-7-209
Separation of goods required, 87A-7-207
Short title of Uniform Commercial Code chapter, 87A-7-101
Stolen receipts, obtaining delivery on, 87A-7-601
Termination of storage at warehouseman's option, 87A-7-206
Time allowed for required actions, 87A-1-204
Transfer of receipt
endorsement necessary to title, right of transferee to require, 87A-7-506
notification to warehouseman of transfer, adverse interest perfected before, 87A-7-504
rights acquired by transferee, 87A-7-504
title acquired by transferee, 87A-7-504
warranties of transferor, 87A-7-507
intermediary delivering receipt, 87A-7-508
Unaccepted delivery order, negotiation of receipt defeating title based on, 87A-7-503
Unauthorized issuance, obligations of issuer unaffected, 87A-7-401
Unknown goods, description in receipt, 87A-7-203
Usage of trade, application, 87A-1-205
Warranties by transferor of receipt, 87A-7-507
intermediary delivering receipt, 87A-7-508
Wrongfully procured receipts, when defeated by prior interest, 87A-7-503

WARM SPRINGS STATE HOSPITAL
See also STATE INSTITUTIONS
Alcoholism services center, function and procedures, 80-2404
Convalescent leave of patients, 38-502
reports by person under whom patient placed, 38-505
termination of leave, 38-504
Cost of support, payment by resident or responsible person, 38-119, 80-1601 to 80-1604
Definition of terms, 80-2401.1
Discharge of patients on report of medical staff, 38-109
maintenance of indigents after discharge, 38-110
Division of mental hygiene, hospital in, 80-2401—See INSANE AND MENTALLY ILL, Division of mental hygiene
Industrial activities permitted, 80-1501 to 80-1503
Location of hospital, 80-2401
Management and control of hospital, 80-1401 to 80-1409
Nonresident insane persons, receipt pending return to state of residence, 38-120
Purpose of hospital, 80-2401
Superintendent, qualifications, 80-2402

WARM SPRINGS STATE HOSPITAL (Continued)
Transfer of patients from other institutions
Boulder river school and hospital, 80-2308
center for the aged, 80-2502
children's center, 80-2106
Galen state hospital, 80-1703
juvenile facilities of department of institutions, 80-2209
prison inmate, commitment proceedings, 80-1908

WARRANTS
City and town warrants, investment of municipal funds in, 11-1310

WARRANTY
Economic poison, warranty accompanying manufacture or sale, 27-203

WATER COMPANIES
Financing statements of utility, contents and place of filing, 87A-9-302.2
definition of terms, 87A-9-302.1
Uniform Commercial Code, application, 87A-9-302.3

WATER CONSERVATION
See FLOOD CONTROL AND WATER CONSERVATION; SOIL AND WATER CONSERVATION; WATER RESOURCES BOARD; WATERS AND WATER RIGHTS; WATER SUPPLY

WATER POLLUTION
See WATER SUPPLY

WATER RESOURCES BOARD
Actions at law, powers and duties of board, 89-118
Appropriation of water by board, declaration of intention, 89-121
Attorney general, duties as legal adviser to board, 89-103
Citation of act, "Montana Water Resources Act of 1967," 89-101.1
Compensation of appointed board members, 89-103
Contributions and appropriations, power of board to accept, 89-120
Co-ordination of development and use of water resources, state policy, 89-101.2
Damaged or destroyed property, restoration or repair by board, 89-120
Definition of terms, 89-102
Director, qualifications and appointment, 89-103.1
powers and duties, 89-103.2
salary, 89-103.3
Earmarked moneys available for board, sources, 89-401
payment of expenses from earmarked funds, 89-402
Employees of board, salaries, 89-103, 89-103.3
Ground water regulation, filing of declaration, duties as administrator, 89-2913
Inventory of water resources, powers and duties of board, 89-132.1
Irrigation districts, creation of, duties of board, 89-1201
Liability of board restricted to moneys provided, 89-120
Meetings of board, quorum, 89-103
Members of board, 89-103
Officers of board, 89-103
Policy of state, declaration of, 89-101.2
Records of declarations of appropriations, copies forwarded to board, 89-813
Revenue bonds, negotiability and terms, moneys applied to retirement, 89-109
Rules and regulations adopted by board, 89-132.1
Salaries of director and employees, 89-103.3
State water plan, state policy, powers and duties of board, 89-101.2, 89-132.1
Surveys and examination of streams, duties of board, 89-851
Transfer of powers from Carey Land Act board and state engineer, 89-103.4
funds and appropriations transferred, 89-103.6
obligations previously assumed unimpaired, 89-103.8
records and property transferred, 89-103.5
Yellowstone Compact obligations unimpaired, 89-103.7
Weather modification, administration of act by board, 89-311

References are to Title and Section numbers

WATERS AND WATER RIGHTS

Adjudication of water rights
- action for adjudication brought by water conservation board, 89-848
- policy of state, 89-847
- referee, appointment to take testimony in water case, 89-849
- surveys and examinations by water conservation board, 89-851

Columbia interstate compact, 89-3201 to 89-3207—See COLUMBIA INTERSTATE COMPACT

Drainage districts—See DRAINAGE DISTRICTS

Fish and game affected by construction projects, 26-1501 to 26-1507—See FISH AND GAME, Construction projects affecting fish and game

Flood control and water conservation projects, municipal participation, 89-3301 to 89-3314—See FLOOD CONTROL AND WATER CONSERVATION

Ground water regulation
- abandonment as question of fact, 89-2925
- appeal to district court
  - appearance by parties, 89-2922
  - findings, conclusions, and orders of court, 89-2922
  - procedure on appeal, 89-2921
  - right to appeal, 89-2920
- appeal to supreme court, 89-2923
- attorney general to assist in enforcement, 89-2930
- beneficial purpose required for appropriation, 89-2925
- change of location of well, effect and notice to administrator, 89-2924
- compilation of information by administrator, 89-2933
- contamination of ground water, measures to prevent, 89-2926
- controlled ground water areas
  - authority of administrator to designate, 89-2914
  - hearing on proposal to establish, 89-2915
  - modification of previous order, 89-2915
  - notice of hearing on proposal for establishment, 89-2914
  - order limiting withdrawals of ground water in area, 89-2915
  - permit required to appropriate in controlled area, 89-2918
  - supervisors, appointment by administrator, 89-2932
- county attorneys to assist in enforcement, 89-2930
- definition of terms, 89-2911
- entry of premises, rights of state agents, 89-2927
- fees for filing of documents, 89-2935
- hearing to determine priorities
  - initiation by claimant or administrator, 89-2916
  - order, contents, filing, and effect, 89-2917
  - parties to be included in hearing, 89-2916
- hearing to review previous order, 89-2919
- information available to public, 89-2928
- inspection rights of state agents, 89-2927
- investigations requested by administrator, 89-2933
- notice of appropriation, contents and filing, 89-2913
- notice of completion, contents and filing, 89-2913
- oath, administration to witness, 89-2934
- oil and gas conservation commission, jurisdiction over oil wells producing water, 89-2916
- penalties for violation of act, 89-2936
- pre-existing uses, priority, 89-2912
- priority of appropriative rights, 89-2912
- reports required are additional to other requirements, 89-2929
- rules and regulations, promulgation and enforcement, 89-2931
- subpoena powers of administrator, 89-2934
- supervisors, appointment by administrator, 89-2932
- waste of ground water, measures to prevent, 89-2926

Interstate compacts, negotiation by water conservation board, 81-2009

Irrigation districts—See IRRIGATION DISTRICTS

Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A

Taxability of water rights used for irrigation, 84-206

References are to Title and Section numbers

WATERS AND WATER RIGHTS (Continued)
Water commissioners, appointment and authority in general, 89-1001
Water resources board, establishment, members, 89-103—See WATER RESOURCES BOARD
Weather modification activities, 89-310 to 89-331—See WEATHER MODIFICATION
Yellowstone river waters
appropriation statement to be filed with water conservation board, 89-907
information given to compact commission by water conservation board, 89-914
records of water diverted, filing with water conservation board, 89-909
rules and regulations for enforcement of compact, 89-912
weir or other measuring device, duty to install, 89-908

WATER SUPPLY
Boats, discharge of waste prohibited, 69-3508.1
equipment required on boats, 69-3505
penalty for violations, 69-3508.2
Cities furnishing water to industries and persons outside city, 11-1001
Classification of waters for most beneficial use, 69-4813
appeal from decision at rehearing, procedure, 69-4816
hearings on classification, notice, 69-4814
industrial use, criteria for classification, 69-4803
rehearing of order, procedure, 69-4815
Co-operation by state board with other agencies, 69-4808
Council for control of water pollution, composition, 69-4810
co-operation of other state agencies required, 69-4819
expenses of council, payment, 69-4811
meetings of council, 69-4812
officers of council, 69-4812
powers and duties of council, 69-4813
terms of council members, 69-4811
Definition of terms relating to pollution, 69-4802
domestic supply, law for protection of, 69-4902
Domestic water supply, protection
appeal from state board rules and standards, 69-4907
definition of terms, 69-4902
penalty for violations, 69-4908
policy of state, 69-4901
prohibited acts endangering water supply, 69-4905
penalty for violation, 69-4908
state board of health to administer law, 69-4903
powers and duties of state board, 69-4904
well-drillers, information to state board, 69-4906
Industrial use, criteria for classification of waters for, 69-4803
Orders of state board or council, compliance required, 69-4817
injunction to enforce order, 69-4818
Permits required for disposal system or discharge of waste, 69-4806
examination and approval of plans, 69-4809
plans and specifications required for permit, 69-4807
revocation of permit for violations, 69-4807
Policy of state with respect to water quality, 69-4801
domestic uses, water used for, 69-4901
Powers of state department, 69-4808, 69-4809
Privately owned waters, chapter not applicable to, 69-4804
State board of health to administer law, 69-4805
domestic water supply, law for protection of, 69-4903
Subdivisions subject to sanitary restrictions, 69-5003
definition of "subdivision," 69-5002
plat not accepted unless in compliance, 69-5004
policy of state, 69-5001
rules and standards for enforcement of requirements, 69-5005

WATER TREATMENT PLANTS AND DISTRIBUTION SYSTEMS
Board of certification, composition and functions, 69-5903

References are to Title and Section numbers

WATER TREATMENT PLANTS AND DISTRIBUTION SYSTEMS (Continued)
Certification of operators by director, 69-5905
application for certificate, 69-5908
examination waived for experienced operators, 69-5906
fees for certificate, 69-5909
disposition of fees, 69-5908
issuance and display of certificate, 69-5907
reinstatement of suspended or revoked certificate, 69-5909
renewal of certificates, 69-5909
requirement of certified operator for plant or system, 69-5906
retention of certificate after termination of employment, 69-5907
suspension or revocation of certificate, 69-5909
term of certificate, 69-5909
unlawful to operate plant or system without certified operator, 69-5911
Classification of plants and systems, factors considered, 69-5904
Definition of terms, 69-5902
Policy of state, 69-5901
Rules and regulations of board, 69-5910
Violations of act or rules as misdemeanor, 69-5912

WATER WELLS
Contractors
actions for compensation, proof of valid license required, 66-2612
appeals from decisions of examining board, 66-2611
application for license, contents and filing, 66-2606
board of health powers unaffected by license act, 66-2614
bond required of licensees, 66-2609
citation of license act, 66-2601
contractors previously in business, licensing, 66-2606
definition of terms used in license act, 66-2602
drilling on own land exempt from license act, 66-2602
employees of contractor exempt from license act, 66-2602
enforcement powers of examining board, 66-2605
examination of applicants for license, 66-2608
examining board, creation, composition and organization, 66-2604
expiration of licenses, 66-2607
fees for license, 66-2606
inspection of wells by examining board, 66-2605
issuance of license, 66-2606
license required for construction of wells, 66-2603
penalties for violations of license act, 66-2613
public interest affected by business of drilling, 66-2603
purpose of license act, 66-2602
qualifications of applicants for license, 66-2608
renewal of licenses, 66-2607
revocation or suspension of license, 66-2610
failure to renew as ground for revocation or suspension, 66-2607
rules and regulations of examining board, 66-2605
separability of provisions of license act, 66-2614
successor in interest to licensee, completion of business by, 66-2615
temporary license, requirements and issuance, 66-2606
training programs, establishment by examining board, 66-2605
Records and data supplied to state board of health, 69-4906

WEAPONS
Prisoner possessing weapon, penalty, 94-3527.1

WEATHER MODIFICATION
Account in agency fund, establishment, 89-325
Acquisition of property by board, 89-312
Administration by water resources board, expenses of members, 89-311
Advisory committees, establishment by board, 89-312
Contributions and appropriations, power of board to accept, 89-312
Expenses, payment from license and permit fees, 89-325

References are to Title and Section numbers

WEATHER MODIFICATION (Continued)
Liability of state and agents, not liable for acts of private persons, 89-330
License required, 89-313
applications, review by board, 89-314
exemptions from fee requirements, 89-314
fee for license, 89-317
issuance of license, 89-315
qualifications of applicants, 89-315
renewal of license, 89-316
suspension or revocation, grounds for, procedure, 89-329
term of license, 89-316
"Operation" defined, 89-319
Permits required, 89-313
activities limited by terms of permit, 89-320
fee, time of payment, 89-324
issuance of permits, 89-318
notice of intention to apply for permit, 89-320
contents of notice, 89-321
publication of notice, 89-322
proof of financial responsibility by applicant, 89-323
requirements for permit, 89-318
separate permit for each operation, 89-319
suspension or revocation, grounds for, procedure, 89-329
Records of operations by licensees, contents, open to public, 89-326, 89-328
Reports of operations, requirements, open to public, 89-327, 89-328
Violation of act, misdemeanor, 89-331
"Weather modification and control" defined, 89-310

WEEDS
See COUNTIES, Weed control

WEIGHTS AND MEASURES
Berries, standard packages, 90-615
Bread, standard loaves, 90-614
Contracts construed in terms of standard weights and measures, 90-617
Fruit, standard packages, 90-615
Meat to be sold by weight, 90-613
Packaged commodities offered for sale
access of state sealer to premises, 90-605
advertising, quantity in package to be stated, 90-610
arrest powers of state sealer, 90-605
deceptive packages, prohibition and seizure, 90-609
deceptive pricing statements prohibited, 90-612
definition of terms, 90-601
entry on premises by state sealer, 90-605
hindering or obstructing officer, penalty, 90-618
injunction to prevent violation of act, 90-619
inspection of packages by state sealer, 90-603
investigation of complaints by state sealer, 90-602
labeling of packages as to identity and weight or measure, 90-607
unit price to be shown in label, 90-608
marking of packages found illegal, 90-603
methods of weighing and measuring commodities, 90-606
net weight to be shown, 90-611
offenses and penalties enumerated, 90-620
off sale orders by state sealer, 90-603
police powers of state sealer, 90-605
prosecution of violations, 90-602
removal orders by state sealer, 90-604
stop-use and stop-removal orders by state sealer, 90-604
supplementary nature of act, 90-621
unit price to be shown on package, 90-608
Poultry to be sold by weight, 90-613
Seafood to be sold by weight, 90-613

WEIGHTS AND MEASURES (Continued)
State sealer, grain inspection fees, 3-202
Textile products, standard measures, 90-616
Thread, standard measures, 90-616
Twine and cordage, standard measures, 90-616
Weighing and measuring devices
inspection by state sealer of weights and measures, 90-129
petroleum meters, gauges and measuring and testing devices, 90-129
Yarn to be labeled as to weight, 90-616

WESTERN INTERSTATE CORRECTIONS COMPACT
Adoption, contents, 95-2308 to 95-2312

WILLS
Devise or bequest to trustee of inter vivos trust established by testator
effect of entire revocation of trust prior to death, 91-321
property not deemed held under testamentary trust, 91-321
validity, 91-321

WINTER WORK PROGRAMS
Definition of terms, 41-1901
Legislative access to minutes of committee, 41-1907
Municipal committees, composition and appointment, 41-1902
meetings of committee, 41-1904
minutes of committee, filing, 41-1907
officers of committee, 41-1904
service without compensation, 41-1903
terms of members, 41-1903
Promotion of program through advertising and public relations, 41-1905
State employment service to cooperate, 41-1906

WITNESSES
Affirmation in lieu of oath, M. R. Civ. P., Rule 43(d)
Coroner's inquest, subpoena of witness, compelling attendance, writing and filing testimony, 95-805, 95-806, 95-808
Criminal cases
expenses of witnesses, 95-1801
indigent defendants, procedure for obtaining subpoenas, 95-1801
preliminary examination, exclusion or separation
recognizance by or deposition after examination, 95-1203, 95-1204
subpoena, requirements and form, 95-1801
Fees payable to witnesses, 25-404
disbarment proceedings, 93-2020
Hostile witnesses, examination as on cross-examination, M. R. Civ. P., Rule 43(b)
Masters, witnesses before, M. R. Civ. P., Rule 53(d)
Mileage allowances for use of own vehicle, 59-801
liability for approval of excess amount, 59-802
Offer of proof, recording in case testimony excluded, M. R. Civ. P., Rule 43(c)
Real estate commission, witnesses before, 66-1938
Subpoena, criminal cases, 95-1801
Subpoena for attendance of witnesses, M. R. Civ. P., Rule 45(a)

WORKMEN'S COMPENSATION
Access of board to employer's books and records, 92-820
Account in agency fund, holding in trust, 92-840
Administrative expenses, account in earmarked revenue fund, 92-116
Appeal to supreme court by claimant at expense of commission, 92-827
Assessment of insurers, 92-1005
Cessation of operation by employer, statement and return of deposit, 92-209
Compensation
biweekly payments, 92-715
death, injuries causing, 92-704
lump sum payments, 92-715

References are to Title and Section numbers

WORKMEN'S COMPENSATION (Continued)
Compensation (Continued)
occupational disease compensation, reduction by receipt of workmen's compensation, 92-1333
partial disability, 92-703
permanent total disability, 92-702
schedule of specific injuries, 92-709
second injury causing permanent and total disability, 92-709A
temporary total disability, 92-701
unreasonable delay or refusal to pay, increase in award, 92-824.1
Contractors included within term "employer," 92-410
independent contractor defense, when not available, 92-438
Copy of testimony, exhibits, pleadings and records, furnishing to claimant without cost in event of action to review decision of board, 92-827
Election by corporate officers not to be bound by act, 92-208
"Employee" defined, 92-411
Extraterritorial application, temporary employment in another state, 92-614
Fees of board, amounts and disposition, 92-119
Game wardens' retirement benefits supplemental to workmen's compensation, 68-1426
Independent contractors excluded from coverage, 92-411
defense of independent contractor, when not available, 92-438
Industrial accident board
ex officio members not to receive additional compensation, 92-108
members, 92-104
occupational disease act, 92-1301 to 92-1368—See OCCUPATIONAL DISEASE ACT
salary of appointed member, 92-104
silicosis payments, administration, 71-1002
transfer of records and payrolls to board, 71-1009
term of office of appointed member, 92-104
"Injury" defined, 92-418
Insurance policies subject to provisions of act, 92-1005
Insurer's reserve for unearned premiums, 40-3008
Legal representation of board, 92-120
Medical and hospital services to be furnished, 92-706
Plan No. 1, assessments against employer, 92-902
Plan No. 2
agricultural employer, election to come under plan, 92-1102
assessments against employers, 92-1005
employers eligible to elect plan, 92-1001
form and manner of election, 92-1002
renewal certificates, delivery to board, 92-1006
Plan No. 3
account in agency fund, payments into, 92-1105
agricultural employer, election to come under plan, 92-1102
default in payments by employer
action for collection of payments, 92-1114
cancellation of coverage by board, 92-1114
compromise of claim by board, 92-1114
injury to employee during default, 92-1115
remedies of employee, 92-1116
subrogation of state to employee's claim, 92-1116
disbursements from account in agency fund, 92-1122
dividends declared from surplus in account, 92-1110
income from account in agency fund, crediting to account, 92-1123
physician's examination fee, 92-1119
premiums paid by employers, 92-1101
rates for insurance, determination by board, 92-1105
reserve funds, investment, 92-1112
segregated moneys, accounting by treasurer, 92-1113
waiver of assessments when balance in account sufficient, 92-1106
Presumption as to elections to be bound by act, 92-209
Prosthetic appliances, repair or replacement, 92-706

References are to Title and Section numbers

WORKMEN'S COMPENSATION (Continued)
Reciprocity with other states, 92-614
Record of proceedings and hearings, 92-827
Records of employer, inspection by board, 92-820
Rehabilitation of injured workmen
account in agency fund, payments to and from, 92-1406
administrative expenses not paid by funds provided, 92-1406
completion of rehabilitation, certification to industrial accident board, 92-1402
expenses payable to workman receiving training, 92-1403
masculine includes feminine, 92-1404
reconsideration of award after rehabilitation, 92-1402
reference of workmen to vocational rehabilitation division, 92-1401
Relief recipients working for county, coverage, 71-307, 92-411
Second injury causing total and permanent disability, account and payments, 92-709A

Y

YELLOWSTONE RIVER COMPACT
Appropriation statement filed with water conservation board for waters taken, 89-907
Information given to compact commission by water conservation board, 89-914
Records of water taken, filing with water conservation board, 89-909
Rules and regulations for enforcement of compact, 89-912
Transfer of powers to water conservation board does not impair obligations, 89-103.7
Weir or other measuring device, duty to install, 89-908

YOUTH FOREST CAMP
See STATE INSTITUTIONS, Juvenile facilities, 80-2202 et seq.

YOUTH GUIDANCE CENTERS
Joint centers, establishment by two or more counties, 16-1008B

Z

ZONING
See PLANNING AND ZONING
Highways, advertising and zoning regulation, 32-4701 to 32-4714—See HIGHWAYS, BRIDGES AND FERRIES, Zoning regulation along highways

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